

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF C.O.C.G. AND OTHERS v. LITHUANIA

(Application no. 17764/22)

JUDGMENT

Art 3 • Expulsion • Novel context of instrumentalisation of migration by a third State, the Respondent State being a target of hostile action by the Belarusian authorities • Elements constituting such instrumentalisation set out • Situation distinguished from cases of mass irregular immigration • Irregular crossings into Lithuania, Latvia and Poland in the context of instrumentalisation of migration orchestrated by the Belarusian authorities • Belarusian authorities' actions endangering the national security and public order of the States concerned and of the Council of Europe area as a whole • Instrumentalisation of migration constituting an affront to Convention values and threatening its basic structure • Court's approach in cases of instrumentalisation of migration set out • States not precluded by the Convention or its Protocols from restricting entry by aliens through their borders or even fully closing those borders • Substantive obligation of protection against ill-treatment under Art 3 to be afforded to all individuals who entered a State's territory illegally, including in the context of instrumentalisation of migration • Contracting States' Art 3 obligations defined • Contracting States not absolved of their substantive obligations • Assessment of whether third-country nationals or stateless persons would have access to an adequate asylum procedure not pertinent in the specific context • Removal of a foreign national to the instrumentalising State would not, as such, constitute a violation of Art 3 • National authorities under an obligation to detect individuals (i) with evident personal vulnerabilities, or (ii) who could show a specific basis for claiming that their removal to the instrumentalising State would evidently expose them to a real and immediate threat to life or a real and immediate

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risk of ill-treatment reaching the Art 3 severity threshold • Individuals in both categories to be detected by national authorities with a view to assessing their need for protection and taking appropriate action in compliance with Art 3 obligations
Art 3 • Expulsion • Applicants' summary removal to Belarus on six consecutive occasions after their unlawful crossing of the Belarusian border into Lithuania in the context of instrumentalisation of migration by Belarus • Absence of grounds on which the domestic authorities could detect the applicants as coming within either of the two categories before removing them on all occasions
Art 5 §§ 1 (f), 2 and 4 • Temporary accommodation of applicants at Foreigners' Registration Centres, without the right to leave them and with limited freedom of movement inside, amounting to deprivation of liberty • Art 5 applicable • Principles established in the Court's case-law on immigration detention, including those on mass influx of aliens, and minimum guarantees to be afforded to detained individuals, relevant to situations of instrumentalisation of migration by another State • Contracting States remained bound by their obligations under Art 5 in this context • Minimum requirements relating to lawfulness not met • Applicants detained for six months under domestic legislation which authorised the automatic deprivation of liberty of all asylum-seekers for that length of time, without any individual decision and any possibility of appeal • Applicants not promptly informed of the reasons for the deprivation of their liberty • Lack of a practical and effective possibility for applicants to challenge the lawfulness of their detention
Art 34 • Hinder the exercise of the right of application • Domestic authorities prevented from complying with the interim measure indicated under Rule 39, not to remove the applicants to Belarus, due to an objective impediment, for reasons not attributable to them • Reasonable steps subsequently taken by the domestic authorities to ensure that similar situations would not occur again

Prepared by the Registry. Does not bind the Court.

STRASBOURG

24 November 2026

This judgment is final but it may be subject to editorial revision.

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In the case of C.O.C.G. and Others v. Lithuania,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Mattias Guyomar, *President*,
Arnfinn Bårdsen,
Lado Chanturia,
Ioannis Ktistakis,
Péter Paczolay,
María Elósegui,
Gilberto Felici,
Erik Wennerström,
Anja Seibert-Fohr,
Frédéric Krenc,
Davor Derenčinović,
Anne Louise Bormann,
Sebastian Răduleţu,
Diana Kovatcheva,
Gediminas Sagatys,
Anna Adamska-Gallant,
Juha Lavapuro*, judges*,

and John Darcy, *Deputy Grand Chamber Registrar*,

Having deliberated in private on 13 February, 26 and 27 November 2025, and on 17, 18 and 24 June 2026 and on 8 and 9 July 2026,

Delivers the following judgment, which was adopted on the latter date:

INTRODUCTION

1. The case concerns the applicants' attempts to enter Lithuania unlawfully from Belarus in a context of "instrumentalisation of migration" by Belarus, their allegations of summary return to that country, and the deprivation of their liberty on various dates between March and October 2022. Before the Court, the applicants raised complaints under Articles 2, 3, 5 § 1, 5 § 2, 5 § 4, 13 and 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"), and under Article 4 of Protocol No. 4 to the Convention.

PROCEDURE

2. The case originated in an application (no. 17764/22) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention by four Cuban nationals whose details are indicated in the appended table ("the applicants") on 8 April 2022. At an early stage of the proceedings, the duty judge decided that the applicants' names were not to be

disclosed. This decision has been maintained throughout the proceedings (Rule 47 § 4 of the Rules of Court).

3. The applicants were represented by Ms D. Sartori and by Mr A. Al-Karim, lawyers practising in Toulouse and London, respectively. The Lithuanian Government ("the Government") were represented by their Agent, most recently Mr R. Dzikovič.

4. On 8 April 2022 the Court indicated to the respondent Government under Rule 39 that, provided that the applicants were on Lithuanian territory, they should not be removed until 6 May 2022. It was also decided that the case should be granted priority under Rule 41. On 4 May 2022 the interim measure was lifted.

5. The application was allocated to the Second Section of the Court (Rule 52 § 1). On 2 December 2022 the Government were given notice of the application.

6. On 16 April 2024 a Chamber of the Second Section decided to relinquish jurisdiction in favour of the Grand Chamber (Article 30 of the Convention and Rule 72).

7. The composition of the Grand Chamber was determined according to the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24. The President of the Court decided that in the interests of the proper administration of justice, the case should be assigned to the same composition of the Grand Chamber as in the cases of *A.R. and Others v. Poland* (application no. 42120/21) and *H.M.M. and Others v. Latvia* (application no. 42165/21) (Rules 24, 42 § 2 and 71), which were relinquished by Chambers of the First and Fifth Sections, respectively.

8. Subsequently, Artūrs Kučs, the judge elected in respect of Latvia, withdrew from sitting in the case of *H.M.M. and Others v. Latvia* (Rule 28 § 3). The President decided to appoint Mārtiņš Mits to sit as an *ad hoc* judge in that case (Article 26 § 4 of the Convention and Rules 71 § 1 and 29 § 1). Pursuant to Article 26 § 5 of the Convention and Rule 24 § 2(d), in the present case and also in *A.R. and Others v. Poland*, the vacancy created by the withdrawal of Artūrs Kučs was later filled by Davor Derenčinović, who had been drawn by lot as a substitute member of the formation.

9. The applicants and the Government each filed written observations on the admissibility and merits of the case (Rule 59 § 1).

10. The Commissioner for Human Rights of the Council of Europe exercised his right under Article 36 § 3 of the Convention to intervene in the proceedings before the Grand Chamber and submitted written comments.

11. In addition, having been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3), third-party comments were received from the Governments of Croatia, the Czech Republic, Denmark, Estonia, Finland, Latvia, Norway and Poland.

12. Following the granting of leave by the President, third-party comments were also received from the following entities: the AIRE Centre

(Advice on Individual Rights in Europe), the Dutch Council for Refugees (DCR), the European Council on Refugees and Exiles (ECRE), the International Commission of Jurists (ICJ) and the International Refugee Assistance Project (IRAP); Amnesty International; the Association for Legal Intervention and the Helsinki Foundation for Human Rights; European Center for Constitutional and Human Rights (ECCHR); Global Legal Action Network (GLAN); Human Constanta International; Human Rights Monitoring Institute; Lithuanian Red Cross; Médecins sans Frontières; the Rule of Law Clinic of the Democracy Institute of the Central European University (CEU); the *Seimas* Ombudspersons' Office of the Republic of Lithuania; the Chair for Public Law and Human Rights at the University of Münster with a group of academics; the Office of the United Nations High Commissioner for Refugees (UNHCR); and five UN Working Groups and Special Rapporteurs: the Working Group on Enforced or Involuntary Disappearances, the Working Group on Arbitrary Detention, the Special Rapporteur on trafficking in persons, especially women and children, the Special Rapporteur on the human rights of migrants and the Special Rapporteur on the right to food.

13. A hearing took place in public in the Human Rights Building, Strasbourg, on 12 February 2025 in the present case and in the cases of *A.R. and Others v. Poland* and *H.M.M. and Others v. Latvia*. The Commissioner for Human Rights of the Council of Europe, together with the Government of Finland, which had been granted leave by the President to participate in the oral proceedings before the Grand Chamber, took part in the hearing.

There appeared before the Court:

(a) *for the respondent Government*

Mr R. DZIKOVIČ, *Agent*,
Ms L. URBAITĖ, *Co-Agent,*
Mr D. DOMARKAS,
Ms R. JASULAITIENĖ,
Ms V. PLOTNIKOVIENĖ,
Mr Ž. TREIGYS,
Ms S. VINGYTĖ, *Advisers*;

(b) *for the applicants*

Ms D. SARTORI,
Mr A. AL-KARIM, *Counsel*,
Ms I. ŠALTĖ,
Ms M. VICQUÉRY, *Advisers*;

(c) *for the Government of Finland*

Ms K. OINONEN, *Agent*,

Ms S. SISTONEN,
Ms P. RÄMÄ, *Advisers*;

(d) *for the Commissioner for Human Rights of the Council of Europe*
Mr M. O'FLAHERTY, *Commissioner for Human Rights*,
Ms C. PIVETEAU,
Mr C. MOMMERS, *Advisers*.

The Court heard oral submissions by Mr Dzikovič, Ms Sartori and Mr Al-Karim. Upon the decision of the President, and with their agreement, the submissions of Ms Oinonen and Mr O'Flaherty were transmitted in written form. The Court also heard the replies given by Mr Dzikovič, Mr Al-Karim, Ms Sartori and Ms Oinonen to questions from judges.

14. Subsequent to the hearing, the President of the Grand Chamber, Marko Bošnjak, withdrew from the case following the end of his term of office at the Court. As President of the Grand Chamber he was replaced by Mattias Guyomar, and as a member of the composition he was replaced by the first substitute judge, Lətif Hüseynov (Rule 24 § 3). Alena Poláčková and Stéphanie Mourou-Vikström also withdrew from the case following the expiry of their terms of office at the Court. They were replaced by, respectively, Péter Paczolay and Anne Louise Bormann, the second and third substitute judges in the case. Subsequently Jovan Ilievski and Lətif Hüseynov were unable to continue with the case. They were replaced by, respectively, Juha Lavapuro and Gilberto Felici, the fourth and fifth substitute judges in the case.

THE FACTS

I. RELEVANT NATIONAL AND INTERNATIONAL CONTEXT

A. Situation at the EU-Belarus border from 2021 onwards

15. On 9 August 2020 a presidential election was held in Belarus in which the incumbent president, Alexander Lukashenko, was declared the winner. The European Union (EU) and its member States did not recognise the results of the election. The European Parliament and the Parliamentary Assembly of the Council of Europe (PACE), among others, condemned the widespread repressions of citizens of Belarus following the disputed election (see paragraphs 196, 197, 202 and 203 below). PACE called upon Council of Europe member States to support the ongoing efforts at international level to call to account the perpetrators of serious human rights violations committed in Belarus by State officials (see paragraph 197 below).

16. On 23 May 2021 an international passenger flight between Athens and Vilnius with a Belarusian journalist and activist on board was diverted to

Minsk on the orders of the Belarusian regime. As a result, the Council of the European Union imposed additional sanctions on various Belarusian individuals and entities, as well as targeted economic sanctions against several sectors of the Belarusian economy. In the aftermath, A. Lukashenko publicly threatened to flood the European Union, notably neighbouring Lithuania and Poland, with migrants and drugs (see paragraph 204 below).

17. In 2021 the Government of Belarus simplified the conditions for entry into Belarus for the purpose of tourism for nationals of various countries in the Middle East and North and Central Africa (see paragraphs 194, 200 and 206 below). There were reports that State-controlled travel agencies in Belarus were offering tours to Belarus for inhabitants of countries such as Iraq, Afghanistan, Syria, Lebanon and Jordan, and that they were luring migrants from the Middle East, as well as from other Asian and some African countries, to Belarus with the promise of onward passage to the European Union (see paragraphs 200 and 206 below). Migrants who reached Minsk were put up in hotels and transferred to the borders with EU member States (see paragraphs 200, 204 and 206 below). Belarusian State officials and affiliated companies thus facilitated the transfer of thousands of migrants to Belarus with a promise of easy access to the European Union (see paragraphs 200 and 206 below). The European Commission reported that in 2021, as of 21 November of that year, 7,831 third-country nationals had entered the territories of Latvia, Lithuania and Poland from Belarus in an unauthorised manner, compared to 257 in the entire year 2020, whereas 42,741 more attempts to cross had been prevented by those three States.

18. There were reports of Belarusian officials forcing migrants to illegally cross the border into the neighbouring countries, not allowing those who had been returned to Belarus to leave the border area, beating or threatening them, and depriving them of basic necessities (see paragraphs 200 and 207 below; see also the third-party interventions in paragraphs 277, 278 and 281 below). It was also reported that many migrants had ended up staying in wooded areas near the border for prolonged periods of time, and that some people had died as a result (see paragraphs 194 and 209 below).

B. Migration flows into Lithuania through the Belarusian border during the relevant period

1. Official land border crossing points

19. The border between Lithuania and Belarus is approximately 679 km long. About 380 km of it are on land and about 299 km on water (rivers and lakes).

20. According to the Government, at the material time (between August 2021 and 13 April 2022), there were six operating international land border crossing points on the border between Lithuania and Belarus

(Lavoriškės, Medininkai, Raigardas, Šalčininkai, Šumskas and Tverečius). Three other border crossing points were operating in railway stations located on Lithuanian territory – one in the city of Vilnius and two others in municipalities neighbouring Belarus (Kena and Stasylos).

21. The border crossing points of Medininkai and Šumskas were located, respectively, 195 km and 199 km from Minsk airport (approximately 2 hours 20 minutes by car).

22. In August 2023 the Lithuanian authorities closed the border crossing points of Šumskas and Tverečius. In March 2024 they also closed the border crossing points of Lavoriškės and Raigardas.

2. Illegal border crossings

23. According to the data published by the State Border Guard Service (hereinafter "the SBGS"), the number of people who attempted to enter Lithuania from Belarus away from border crossing points and were denied entry was as follows:

– from 3 August to 31 December 2021: 8,106;
– in 2022: 11,211;
– in 2023: 2,643;
– in 2024: 1,002.

No comparable data is available for the period preceding the adoption of the Minister of the Interior's decision of 2 August 2021 which authorised the denial of entry to anyone crossing the land border away from official crossing points (see paragraph 32 below).

24. According to the data published by the SBGS, the number of non-EU nationals who were refused entry into Lithuania at land border crossing points for not meeting the relevant entry requirements was as follows:

– in 2018: 4,795;
– in 2019: 5,805;
– in 2020: 4,112;
– in 2021: 2,794;
– in 2022: 4,842;
– in 2023: 4,000;
– in 2024: 2,670.

3. Asylum applications

25. According to the data published by the Migration Department, the total number of asylum applications lodged in Lithuania, including first as well as repeat applications, was as follows:

– in 2017: 599;
– in 2018: 423;
– in 2019: 646;
– in 2020: 321;

– in 2021: 4,259;
– in 2022: 1,045;
– in 2023: 575;
– in 2024: 362.

26. According to the data provided by the Government, from August 2021 to September 2024, 648 asylum applications were lodged at or near the land border, either at the border crossing points (181) or by individuals who had crossed the border illegally (467).

27. According to the data provided by the Government, from the time when it became possible to lodge asylum applications at the Lithuanian embassy in Minsk (on 21 September 2021 – see paragraph 155 below) until the date of the Government's latest written submissions to the Court (30 September 2024), 27 asylum applications were lodged at the embassy.

28. The Migration Department has published the following data relating to the examination of asylum applications lodged in Lithuania:

	2019	**2020**	**2021**	**2022**	**2023**	**2024**
Number of people granted refugee status	79	80	443	316	403	178
Number of people granted subsidiary protection	13	1	8	21	1	12
Number of rejected asylum applications	233	266	2,768	548	192	242
Number of asylum applications in respect of which the examination was discontinued	157	254	532	733	251	105

C. Declaration of an extraordinary situation and a state of emergency in Lithuania

29. On 2 July 2021 the Lithuanian government declared a State-level extraordinary situation (*valstybės lygio ekstremalioji situacija*) due to a mass influx of aliens into Lithuania.

30. On 13 July 2021 the *Seimas* (the Lithuanian Parliament) adopted a resolution on countering the hybrid aggression. It stated, *inter alia*, that hostile regimes were organising illegal crossings of the Lithuanian border with the aim of destabilising the situation in Lithuania and thus creating a risk for the constitutional and public order of Lithuania. It also stated that only a minimal number of the foreign nationals illegally crossing the border were genuine refugees. The *Seimas* recommended that the government take measures to protect the border, such as building a physical barrier along it

and seeking the assistance of the military when protecting the border. It also stated that in managing the extraordinary situation, it was necessary to ensure the protection of the human rights of migrants and refugees.

31. On 13 July 2021 the *Seimas* amended the Law on the Legal Status of Aliens (hereinafter "the Aliens Act"). The amendment provided, *inter alia*, that after the declaration of a state of emergency or an extraordinary situation due to a mass influx of aliens, asylum-seekers were to be temporarily accommodated in designated facilities without the right to freedom of movement on Lithuanian territory until a decision to admit them to Lithuania was adopted, but for no longer than six months (see paragraph 137 below).

32. On 2 August 2021 the Minister of the Interior adopted a decision on management of the mass influx of aliens at the Lithuanian-Belarusian border. It stated, *inter alia*, that the crossing of the Lithuanian land border would be allowed only at border crossing points. Individuals who had crossed the State border in other locations and who wished to seek asylum in Lithuania would not be admitted to Lithuanian territory but would be required to go to the nearest operating border crossing point or a diplomatic mission of Lithuania.

33. On 10 August 2021 the *Seimas* enacted another amendment to the Aliens Act. It stated, *inter alia*, that after the declaration of a state of emergency or an extraordinary situation due to a mass influx of aliens, asylum applications could only be lodged at border crossing points or in transit zones, or with Lithuanian diplomatic missions or consulates. Such applications could only be lodged on Lithuanian territory if the alien had arrived there legally (see paragraph 138 below).

34. On 9 November 2021 the *Seimas* declared a state of emergency (*nepaprastoji padėtis*) for one month on the territory along the border with Belarus and in accommodation centres for aliens. The resolution of the *Seimas* provided for restrictions on, *inter alia*, access to the areas where the state of emergency had been declared and on the right of assembly in those areas. On 7 December 2021 the state of emergency was extended until 14 January 2022.

35. On 23 December 2021 the *Seimas* enacted another amendment to the Aliens Act. It introduced a new chapter to the Act, laying down, *inter alia*, the regulation applicable to the entry of aliens into Lithuania, their right to seek asylum and their temporary accommodation after the declaration of a state of emergency or an extraordinary situation due to a mass influx of aliens. The new regulation was essentially the same as that introduced by the earlier amendments (see paragraphs 31 and 33 above and 139-151 below).

36. On 24 February 2022 the President of Lithuania issued a decree declaring a state of emergency on the entire territory of Lithuania until 10 March 2022, in view of Russia's invasion of Ukraine. The decree stated, *inter alia*, that the large-scale mobilisation of military forces on the Russian and Belarusian territories created favourable conditions for those regimes to carry out hybrid attacks or other provocations against Lithuania, especially in

the areas near the border. It ordered various measures, including further strengthening of the protection of the State border. The *Seimas* approved the President's decree on the same day.

37. On 10 March 2022 the *Seimas* extended the state of emergency until 20 April 2022. Its resolution provided, *inter alia*, that while the state of emergency was in effect, persons who crossed or attempted to cross the external border of the European Union outside of the designated locations would not be allowed to enter Lithuania, with the exception of aliens fleeing military aggression and/or persecution. The state of emergency was further extended by the *Seimas* until 15 September 2022 by resolutions adopted on 21 April and 28 June 2022.

38. On 13 September 2022 the *Seimas* extended the state of emergency in relation to the areas along the borders with Belarus and Russia (Kaliningrad) and to the border crossing points situated outside the border area from 16 September to 16 December 2022. The resolution pointed out, *inter alia*, that the Lukashenko regime was becoming more active in using migrants as a form of hybrid aggression against Lithuania and that Belarusian officials were involved in organising the transfer of migrants to the Lithuanian border, directing them towards Lithuania, directly damaging the physical barrier built on the Lithuanian border or providing migrants with the means of doing so. The state of emergency in the aforementioned areas was extended by the *Seimas* until 2 May 2023 by resolutions adopted on 13 December 2022 and 14 March 2023.

39. On an unspecified date the Secretary General of the Council of Europe was notified of the measures taken by the Lithuanian authorities. No derogation was made under Article 15 of the Convention.

D. Other actions taken by the Lithuanian authorities

40. According to the information provided by the Government, the border between Lithuania and Belarus used to be managed in accordance with several agreements between the two States, including the Agreement on the Fundamental Principles of Border Cooperation of 1 June 2006 and the Agreement on the State Border Legal Regime of 16 September 2009. However, since the start of the events at issue, Belarus had stopped complying with those Agreements. The Government provided to the Court a video recording showing Belarusian border officials pushing a group of 35 irregular migrants into Lithuanian territory, filmed in the Varėna border area on 17 August 2021. On multiple occasions the SBGS had informed the Belarusian border authorities of the locations where groups of migrants were concentrated, but those authorities had not taken any action, contrary to the provisions of the aforementioned Agreements. Accordingly, on 18 January 2023 the Government of Lithuania denounced the Agreement on

the Fundamental Principles of Border Cooperation and it ceased to have any legal effect on 4 March 2023.

41. According to the information provided by the Government, in 2021 the Lithuanian authorities opened 70 pre-trial investigations concerning unlawful transportation of people across the State border under Article 292 of the Criminal Code. That number was 168 in 2022, 134 in 2023, and 43 from January to September 2024.

42. On 19 May 2025 the Lithuanian Government lodged an application instituting proceedings against Belarus before the International Court of Justice with regard to a dispute relating to alleged breaches by Belarus "of its obligations under the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, in relation to the large-scale smuggling of irregular migrants from Belarus into Lithuania".

E. Relevant subsequent developments

43. In its communication of 11 December 2024 (see paragraph 205 below), the European Commission noted that irregular arrivals at the EU-Belarusian borders had increased by 66 per cent in 2024 compared to the same period in 2023, particularly at the Polish-Belarusian border, also due to the involvement of Belarusian authorities in facilitating crossings. The European Commission noted that the Russian authorities were facilitating these movements, given that more than 90 per cent of migrants illegally crossing the Polish-Belarusian border had a Russian student or tourist visa. It further noted that similar elements had been observed in 2023 at the Finnish-Russian border, where the majority of migrants were in possession of a valid Russian visa and had already previously tried to enter the European Union through Belarus (see also the third-party intervention by the Government of Finland in paragraph 262 below). The European Commission added that "a recent agreement between Belarus and Russia on the mutual recognition of visas could further facilitate movements of third country nationals between Russia and Belarus, including those intending to illegally cross the border to the EU" (see paragraph 205 below).

II. THE CIRCUMSTANCES OF THE CASE

A. The applicants' departure from their country of origin and their stay in Russia

44. The applicants are four Cuban nationals, born between 1991 and 2000.

45. According to the applicants, in July 2021 they participated in peaceful protests against the Cuban government. The aim of the protests was to express

dissatisfaction with shortages of food, medication, water and electricity and with restrictions on freedom of expression and freedom of the press. Hundreds of protestors were arrested, held incommunicado and subjected to ill-treatment by the Cuban authorities. Some of the applicants' acquaintances who participated in the protests were arrested. Fearing arrest and ill-treatment, the applicants decided to leave the country.

46. The first and second applicants, who are married, left Cuba together in August 2021. The fourth applicant left in October 2021 and the third applicant in December 2021. They all went to Russia, which they had chosen because Cuban nationals could travel there without a visa. According to the applicants, while staying in Russia, they were regularly harassed by the police and feared being returned to their country of origin.

47. On 30 March 2022 the four applicants, travelling together, flew from Moscow to Minsk. It is not disputed that they arrived in Belarus legally since, as Cuban citizens, they were not required to have a visa for stays shorter than thirty days.

48. According to the applicants, they were aware that Belarus lacked a functioning reception and asylum system, therefore, immediately upon arrival at Minsk airport they took a taxi to the Belarusian-Lithuanian border. They went to the village of Kriuki, in Belarus, located approximately 199 km away from Minsk airport (approximately 2 hours 45 minutes by car). They submitted that they had chosen the place for crossing the border themselves, by consulting a map, and that their aim had been to go to a place which would be inhabited on both the Lithuanian and the Belarusian side. After reaching the border in the late afternoon of 30 March 2022, the applicants waited until the following morning to cross it on foot.

B. The applicants' entry into Lithuania between 31 March and 6 April 2022

1. Official reports by border guards and other information provided to the Court

49. According to the official report of 31 March 2022, at around 9.40 a.m. four people (the applicants) were captured on a security camera crossing the border from Belarus and entering Lithuanian territory in the Adutiškis border area, in the district of Švenčionys. At 10.30 a.m. they were apprehended by border guards. They introduced themselves as Cuban citizens and presented their passports. They stated that they had reached Lithuania through Russia and Belarus. At 1.25 p.m. they were denied entry (*neįleisti*) into Lithuania, in line with the *Seimas*'s resolution of 10 March 2022 (see paragraph 37 above). Several photographs which appeared to show the applicants crossing the border were appended to the report.

50. According to the information provided by the Government, on 31 March 2022 the applicants were apprehended near the border pillar

no. 1534, which was approximately 23 km by road or 51 km along the border from the nearest border crossing point. They were denied entry into Lithuania near the border pillar no. 1569, which was approximately 37 km by road from the place of their apprehension. According to the applicants, the location to which they were taken was at least 10 hours by foot from the nearest border crossing point.

51. According to the official report of 1 April 2022, at 11.35 a.m. a local resident informed the SBGS that four people, possibly irregular migrants, had been seen in the village of Antanai, in the Adutiškis area, in the district of Švenčionys, approximately 4 km from the border. At 11.45 a.m. they (the applicants) were apprehended by border guards. They introduced themselves as Cuban citizens and presented their passports. At 12.35 p.m. they were denied entry into Lithuania, in line with the *Seimas*'s resolution of 10 March 2022 (see paragraph 37 above).

52. According to the information provided by the Government, on 1 April 2022 the applicants were apprehended in the village of Antanai, which was approximately 7 km from the location where they had been denied entry into Lithuania on 31 March 2022 (see paragraph 50 above) and approximately 30 km by road or 35 km along the border from the nearest border crossing point. They were denied entry into Lithuania near the border pillar no. 1509, which was approximately 14 km by road from the place of their apprehension.

53. According to the official report of 2 April 2022, at around 11.05 a.m. the Adutiškis border post received a telephone call from a local resident who informed them that four people (the applicants) had arrived at his home in the village of Ramoniūnai, in the Adutiškis area, in the district of Švenčionys. At around 11.15 a.m. the border guards arrived and apprehended the applicants. They introduced themselves as Cuban citizens and presented their passports. The fourth applicant felt unwell and fainted. An ambulance was called and she was taken to hospital, but no health problems were found. The applicants were given humanitarian aid packages. At around 3.40 p.m. they were denied entry into Lithuania, in line with the *Seimas*'s resolution of 10 March 2022 (see paragraph 37 above).

54. According to the information provided by the Government, on 2 April 2022 the applicants were apprehended in the village of Ramoniūnai, which was approximately 1 km from the location where they had been denied entry into Lithuania on 1 April 2022 (see paragraph 52 above) and approximately 24 km by road or 55 km along the border from the nearest border crossing point. They were denied entry into Lithuania near the border pillar no. 1589, which was approximately 16 km by road from the place of their apprehension.

55. According to the official report of 4 April 2022, at around 1.45 p.m. a local resident informed the SBGS that four people (the applicants) had been seen walking towards a village in the Adutiškis area, in the district of Švenčionys. The border guards apprehended them at around 2 p.m.

approximately 1 km from the border. They introduced themselves as Cuban citizens and presented their passports. They stated that they had reached Lithuania through Russia and Belarus. They were given humanitarian aid packages. At 5 p.m. they were denied entry into Lithuania, in line with the *Seimas*'s resolution of 10 March 2022 (see paragraph 37 above).

56. According to the information provided by the Government, on 4 April 2022 the applicants were apprehended near the border pillar no. 1577, which was approximately 4 km from the location where they had been denied entry into Lithuania on 2 April 2022 (see paragraph 54 above) and approximately 33 km by road or 37 km along the border from the nearest border crossing point. They were denied entry into Lithuania near the border pillar no. 1496, which was approximately 15 km by road from the place of their apprehension.

57. According to the official report of 6 April 2022, at 1 p.m. the SBGS apprehended four people (the applicants) on Lithuanian territory. They introduced themselves as Cuban citizens and presented their passports. They were provided with humanitarian aid. At 1.55 p.m. they were denied entry into Lithuania, in line with the *Seimas*'s resolution of 10 March 2022 (see paragraph 37 above).

58. According to the information provided by the Government, on 6 April 2022 the applicants were apprehended near the border pillar no. 1489, which was approximately 2 km from the location where they had been denied entry into Lithuania on 4 April 2022 (see paragraph 56 above) and approximately 31 km by road or 65 km along the border from the nearest border crossing point. They were denied entry into Lithuania near the border pillar no. 1492, which was approximately 2 km by road from the place of their apprehension.

59. The Government provided the Court with copies of four *laissez-passer* documents containing the applicants' full names, photographs, dates and places of birth and the names of their parents. Those documents appeared to have been issued by the Spanish General Consulate (*Consulado General de España*) in Lithuania on 29 March 2022 and signed by the *Cónsul General de Madrid*, and stated that the applicants were authorised to travel to Spain, where they lived. The Government also provided a copy of email correspondence between the SBGS and the Spanish police. In an email sent at around 10 a.m. on 1 April 2022, an officer of the SBGS asked the Spanish police whether the aforementioned documents were authentic. In two emails sent between 3 and 4 p.m. the same day, a representative of the Spanish police replied that the documents were forgeries, since the applicants were not Spanish nationals. On 13 April 2022 the SBGS sent an official request for information to the Spanish authorities regarding the authenticity of the same documents. On the same day the Spanish authorities replied that the documents were forgeries. They reiterated that such documents could be issued only to Spanish nationals but not to

nationals of other countries, and pointed out that there was no Spanish Consulate in Madrid.

2. The applicants' version of the events

(a) The first entry on 31 March 2022

60. The applicants reached the border area in the late afternoon on 30 March 2022 and decided to wait for the following morning in order to cross the border. At around 9 a.m. on 31 March 2022 they crossed the border into Lithuania on foot; they made the crossing independently and it was entirely peaceful. They reached the town of Adutiškis, where they were apprehended by border guards. The border guards asked them to hand over their passports, which they did. The border guards spoke Lithuanian and pretended not to understand English when the second and third applicants, who had basic English skills, expressed requests for asylum. The applicants were taken by car to a nearby border post.

61. The applicants could not remember the exact sequence of events because those events had occurred rapidly and in traumatic circumstances. However, either before entering the cars or upon arrival at the border post, they were ordered to hand over their phones. Their belongings were searched. The border guards examined the contents of each phone, they found intimate pictures on the fourth applicant's phone and ridiculed them. The border guards also took photographs of the applicants' belongings and forcefully took photographs of themselves with the applicants.

62. The first applicant was forced into a container at the back of the border post and detained there for some time. He did not understand what was being said to him and the border guards appeared to become angry with him as a result. All the applicants were shouted at, pushed around and threatened with an electric taser. The second applicant's belongings were thrown on the floor while she was verbally humiliated. The third applicant asked for water and food but it was not provided.

63. The second and third applicants asked for asylum in English on behalf of all the applicants. The first and fourth applicants, who spoke very little English at the time, repeated after the second and third applicants, "I need asylum". None of the border guards spoke Spanish and no interpreter was present. The applicants understood only partially what was said to them by the border guards. A male officer replied that "Lithuania [did] not give asylum to Cubans", without providing any further information. Another male officer commented that the applicants should "be happy to go back to that communist country".

64. The border guards then drove the applicants to an unmarked border area, returned their belongings to them and forced them back into Belarus at gunpoint. The applicants asked which way to go and were told to go left "to

reach Cuba". By instructing them to go left, the border guards in fact pointed them in the opposite direction from the nearest official border crossing point.

65. They walked along the border for several hours until they reached a lake which they could not cross. The same afternoon, they were approached by several Belarusian officers who drove them to another location in the forest, threatened them with violence and forced them to cross the border into Lithuania. The applicants spent the night in the forest.

(b) The second entry on 1 April 2022

66. On the morning of 1 April 2022 the applicants set off in search of help. They were soon apprehended by Lithuanian border guards. The applicants attempted to communicate with them in English and showed their Cuban passports. The border guards searched them. The applicants told them that they wished to seek asylum, but they were again told that asylum was not given to Cubans. The border guards did not provide them with any information on how to apply for asylum and did not offer them any help. The border guards immediately took them to the border but not to an official crossing point. The second, third and fourth applicants were very weak after two days of sleeping rough in cold weather and had difficulty walking. The border guards drove those three applicants to the border by car, while the first applicant was made to walk. The border guards forced the applicants back into Belarus at gunpoint and threatened them with an electric shock device.

(c) Further entries between 2 and 6 April 2022

67. Between 2 and 6 April 2022 the applicants crossed the border into Lithuania multiple times. They could not remember the exact details of each occasion because they had been in a state of shock, had not eaten for several days and had kept their mobile phones switched off most of the time in order to save the batteries. On at least two occasions they were forced to cross the border by Belarusian border guards under threat of violence, whereas on the remaining occasions, they crossed on their own, peacefully, on foot, and at points where there were gaps in the border fence. On each occasion when they were apprehended by the Lithuanian border guards, they were searched, their phones were seized, they presented their Cuban passports and expressly requested asylum. However, each time they were forced back into Belarus at gunpoint by Lithuanian border guards, away from official border crossing points.

68. On one occasion, after entering Lithuanian territory, the applicants reached a house. The people living there invited them in and gave them food, blankets and medication. The applicants showed symptoms of hypothermia and had difficulty walking. The third applicant had severely blistered feet, the first applicant had an accumulation of pus on his genitals, as a result of being beaten by border guards and exposure to the cold, and the fourth applicant

showed severe symptoms of frostbite on her feet. The hosts telephoned the Lithuanian authorities to obtain medical assistance, but such assistance was refused. The hosts called an ambulance, which took the fourth applicant to hospital. Border guards then arrived at the house and took the other three applicants to a border post. Later that day, border guards took the fourth applicant from the hospital to the same border post. At the border post, the fourth applicant asked to use the bathroom and when she came out, one of the border guards slapped her on the buttocks.

69. The applicants again stated that they wished to seek asylum, but the border guards told them that they could not do so, without providing any further information. They offered the applicants minimal humanitarian assistance – packets of sugar, marmalade, tea bags, dried fruit, soup and water – but no medical assistance. They drove the applicants to the border and forced them back into Belarus at gunpoint.

(d) Other submissions made by the applicants

70. The applicants provided photographs of themselves in the forest and photographs of blisters and swelling on the third and fourth applicants' feet.

71. They also provided two videos recorded on their phones. In one of those videos, the second applicant can be seen filming herself while walking down a forest path behind the other applicants. She states, *inter alia*, that from 31 March until "the present day" (it is unclear whether the video was filmed on 3 or 13 April 2022), the Lithuanian and Belarusian police have returned them from one country to the other several times, that all this time the applicants have been sleeping in the forest, that the Belarusian officials have threatened them with machine guns and issued death threats, forcing them to cross the border, that the applicants are exhausted, without food or water, that they have been collecting ice water to boil and drink, that the first applicant has pus on his genitals and between his muscles, and that all the applicants have "shattered mouths". In the other video, filmed on an unspecified date, the second applicant can be seen talking to her sister on the phone, explaining that the applicants are in Belarus, very close to the border, and showing their surroundings in a snowy forest; towards the end of the conversation, the second applicant starts crying.

3. The Government's version of the events

72. When the SBGS apprehended the applicants in Adutiškis on 31 March 2022, they stated that they did not wish to remain in Lithuania and that their destination was Spain. They did not explain the circumstances of their arrival in Lithuania and did not present their travel documents, therefore, they were taken to the border post in order to elucidate those circumstances. When the applicants were questioned at the border post, they presented Spanish return documents (*laissez-passer*), stored on their phones (see

paragraph 59 above), and claimed that they had the right to travel to Spain. The officers made copies of those documents. It was only afterwards that the applicants presented their Cuban passports. After the applicants were denied entry into Lithuania, they were taken to the border and returned to Belarus; the closest border crossing point, Tverečius, was approximately 28 km away.

73. Each time they were apprehended, the applicants were wearing clean clothes – the Government pointed out that in one of the photographs submitted by the applicants one of them could be seen wearing white shoes. On most occasions they refused any humanitarian assistance.

74. The Government provided a 38-second-long video, filmed by the border guards on 2 April 2022, in which the first and second applicants can be seen sitting on a bench at a table, outside, next to a wooden building. They are both wearing winter jackets, the second applicant is also covered with a blanket, and two cups of tea are placed on the table in front of them. The applicants are speaking to the camera in a mixture of Spanish and English:

> "The second applicant: 'I don't want to ... No, in Lithuania no, no Lithuania ... go in Belarus ... from there, Cuba or Russia, I don't know ... but no Lithuania, ok ... Russia, tourist, in Belarus, ok, and return ... Russia and come back, Cuba ...'
>
> The first applicant: 'In passport, ticket, flight.'"

C. Interim measure indicated by the Court on 8 April 2022

1. Events of 7-9 April 2022

75. According to the applicants, on 7 April 2022 they crossed the border into Lithuania and stayed in the forest. They contacted *Sienos Grupė* ("the Border Group"), a group of volunteers providing humanitarian aid to migrants at the border, and sent them their geographical coordinates. At around 2 a.m. on 8 April 2022 two volunteers, A.K. and R.Š.V., found the applicants in the forest and gave them food, water, medication, warm clothes and charged power banks. They also provided the applicants with forms for lodging a request with the Court for interim measures. According to the applicants, after the volunteers left, they stayed at the same location.

76. The Government submitted that the applicants had failed to provide any evidence that they had been present on Lithuanian territory on 7 and 8 April 2022. A copy of the aforementioned WhatsApp message allegedly corroborating their presence in Lithuania on 7 April 2022 (see paragraph 75 above) had not been provided to the Court, whereas the screenshots allegedly indicating their location on Lithuanian territory on 8 April 2022 (see paragraph 88 below) gave reason to doubt whether they were showing the applicants' actual location.

77. On 8 April 2022 *Sienos Grupė* lodged a request for interim measures under Rule 39 of the Rules of Court on the applicants' behalf. In that request, it was stated, *inter alia*, that the applicants had "attempted for one week to

enter Lithuania in order to ask for asylum and international protection, yet were pushed back at least eight times back to Belarus and experienced violence from both Lithuanian and Belarusian border guards".

78. On 8 April 2022 the duty judge granted the applicants' request for interim measures and indicated to the Government that, provided that the applicants were on Lithuanian territory, they should not be removed until 6 May 2022. That decision was sent to the parties via the Court's e-communication platform (eComms) at around 6.45 p.m. Lithuanian time.

79. At 6.55 p.m. U.R., another volunteer of *Sienos Grupė*, sent a copy of the decision on interim measures to the applicants on WhatsApp.

80. According to an official report by a border officer, at around 10.10 p.m. on 8 April 2022 the Adutiškis border post received a telephone call from U.R., who informed them that the four applicants were in the forest, not far from the village of Svirkos, in the district of Švenčionys, and that the Court had granted their request for interim measures, temporarily allowing them to stay in Lithuania. U.R. told them that she knew where the applicants were and that they had the Court's decision on them, which had been sent to them by email. At around the same time, other border guards stopped a car being driven by U.R. and E.K., another volunteer. The guards thanked them for the information and ordered them to leave the border area. The guards found the applicants at around 1.30 a.m. They introduced themselves as Cuban citizens and presented their passports. They were taken to the Adutiškis border post and provided with humanitarian assistance.

81. According to the information provided by the Government, on 9 April 2022 the applicants were apprehended approximately 1 km from the location where they had been denied entry into Lithuania on 6 April 2022 (see paragraph 58 above) and approximately 29 km by road or 66 km along the border from the nearest border crossing point.

82. Shortly after midnight on 9 April 2022 the SBGS received an email from the Human Rights Monitoring Institute, a Lithuanian NGO, informing it that the applicants' request for interim measures had been granted by the Court and enclosing a copy of that decision. The same email was also addressed to the *Seimas* Ombudspersons' Office and the chair of the Parliamentary Committee on Human Rights.

83. The applicants spent the night at the Adutiškis border post. On 9 April 2022 they were taken to the Belarusian border, approximately 153 km from the place where they had been apprehended and approximately 29 km from the nearest border crossing point. At 12.25 p.m. they were denied entry into Lithuania.

84. On 11 April 2022 *Sienos Grupė* asked the SBGS to provide information regarding the circumstances in which the applicants had been returned to Belarus on 9 April 2022. The SBGS replied on 29 April 2022, stating, *inter alia*, that when apprehended at the Lithuanian border for the first time, the applicants had presented false Spanish return documents (see

paragraph 59 above). Moreover, on the night of 9 April 2022 the Vilnius section of the SBGS had received from an unverified sender a "supposed" decision of the Court granting the applicants' request for interim measures (see paragraph 82 above). Given that they had previously presented false documents to the officers, the SBGS had had well-founded doubts as to the authenticity of that document.

85. According to the applicants, after they were apprehended on 9 April 2022, the guards took away their mobile phones; only the fourth applicant managed to hide hers and continued to exchange text messages with U.R., until the guards took it away as well. On the morning of 9 April 2022 the applicants were told to get in a car and the border guards drove them for a long time. The applicants pleaded with the border guards not to return them to Belarus and told them that they had a copy of the decision on interim measures on their mobile phones. However, the guards escorted them to the border fence, gave them back their mobile phones, gave them a small bag of food and forced them back into Belarus at gunpoint and under threat of an electric shock device. After being pushed back into Belarus, the applicants discovered that their SIM cards had been damaged. Shortly afterwards they were found by Belarusian border guards, who beat the first applicant and molested the others. The guards searched the applicants' belongings, broke their mobile phones, put them in the trunk of a car, drove them to an unknown location in the forest and forced them to cross the border into Lithuanian territory. The applicants remained in the forest for several days for fear of ill-treatment from both sides.

2. Material submitted by the applicants

86. The applicants provided the Court with written statements by A.K., R.Š.V., U.R. and E.K. According to the statements of A.K. and R.Š.V., at 2 p.m. on 7 April 2022, *Sienos Grupė* received a message from the applicants through WhatsApp, stating that they were on Lithuanian territory, stranded in the forest and in urgent need of medical attention, food and water. The applicants sent a screenshot of their geographical location. According to the volunteers, those messages were subsequently deleted and copies could not be provided. A.K. and R.Š.V. found the applicants sleeping on the ground, at around 2 a.m. on 8 April 2022. The applicants were visibly weak, had clearly not eaten for days and were drinking swamp water. The volunteers asked the applicants to tell their story, which they recorded on their phones and on that basis prepared the interim measure request to the Court.

87. The applicants also provided screenshots of their text message exchanges with the volunteers dating from 8 to 14 April 2022, which included photographs of the applicants in the forest. In the exchanges of 8 and 9 April 2022, the volunteers informed the applicants of the progress of the interim measure request and the applicants stated several times that they were cold and hungry and that their lives were in danger.

88. The text message exchanges also included screenshots of their geographical coordinates which the applicants had sent to the volunteers, taken at the following times: at 1.12 p.m. on 8 April 2022, indicating their location on Lithuanian territory, approximately 4 km from the village of Svirkos; at 1.23 p.m. on the same day, indicating their location in the village of Svirkos; at 6.40 p.m. on 8 April 2022 and at 1.10 a.m. on 9 April 2022, indicating their location in the same spot approximately 4 km from the village of Svirkos; and at 2.27 a.m. on 9 April 2022, indicating their location approximately 1 km from the village of Svirkos.

89. Lastly, the applicants provided photographs of damaged SIM cards and mobile phones, and several audio and video-recordings of the volunteers' interactions with the border guards.

3. Meeting of the Parliamentary Committee on Human Rights

90. On 20 April 2022 the Parliamentary Committee on Human Rights held a meeting at which it discussed, *inter alia*, the possible non-compliance with the interim measure indicated by the Court in respect of the applicants.

91. During that meeting, the volunteers of *Sienos Grupė* who had gone to the border on 8 April 2022 stated that they had had a printed copy of the Court's decision on them and had offered to give it to the border guards, but that the latter had refused to take it.

92. A representative of the SBGS stated that when apprehended on Lithuanian territory for the first time, the applicants had presented false Spanish return documents (see paragraph 59 above); the SBGS officers had therefore had good reason to doubt the authenticity of any documents which they might have shown them on their mobile phones on the night in question. He stated that, in general, the SBGS considered a decision on interim measures authentic only if it had been received from an official source, the Government's Agent before the Court. In the applicants' case, the SBGS had received the decision from the Government's Agent on 12 April 2022. The applicants had been apprehended again on Lithuanian territory on 13 April 2022 and had lodged asylum applications on that date (see paragraph 95 below). The representative also stated that it was not the SBGS's practice to damage people's SIM cards. While mobile phones were sometimes checked, they were always returned intact.

93. The Government's Agent informed the Committee that the decision on interim measures had been uploaded to eComms on a Friday evening after working hours. Previously, in such circumstances, the Agent had been informed of any such decisions by telephone, but that had not been done in the applicants' case. The Agent had learned of the applicants' situation from the media, had checked eComms on Sunday (10 April 2022) and had immediately forwarded the decision to the SBGS.

94. The Chair of the Committee expressed his concerns that the SBGS, after receiving information about the decision on interim measures, had not

taken any action to verify its authenticity and had returned the applicants to Belarus without doing so.

D. The applicants' entry into and stay in Lithuania

95. On 13 April 2022 the applicants were apprehended on Lithuanian territory, in the district of Šalčininkai. According to the information provided by the Government, they were apprehended approximately 100 km from the location to which they had been taken by the SBGS on 9 April 2022 (see paragraph 83 above). The applicants were taken to a border post. An ambulance was called, and it was recommended that the third and fourth applicants be taken to hospital for a check-up.

1. Preliminary interviews in the asylum procedure

96. On 13 April 2022 the applicants lodged asylum applications and underwent preliminary interviews (*pirminė apklausa*) with an official of the Migration Department with the help of a Spanish to Lithuanian interpreter, during which they gave brief oral statements. The applicants indicated the reasons why they had left their country of origin, why they had decided to go to Russia and why they had eventually decided to leave the latter country. They also described the circumstances of their arrival in Lithuania from Belarus (see paragraphs 97-100 below).

97. The first applicant stated:

> "... I had to go to Russia because Cubans do not need a visa to go there. I found a job in Russia. I also took part in protests against Putin's regime concerning Ukraine ... We were persecuted because of that. The police started demanding money from us, otherwise they would have put us in prison ... In Russia I worked illegally in order to survive ... While staying in Moscow, I had to leave in order to extend my visa. From Moscow I travelled to Belarus ... I spent four days in Minsk. I stayed at a hotel there [and] after four or five days I went back to Russia ... After some time, I decided to leave Russia. I was tired of working illegally, the police kept harassing me and asking for money. They threatened to deport us to Cuba. At the beginning of April, we went from Russia to Minsk. Our aim was to get to the Lithuanian-Belarusian border. We understood that we were crossing the border illegally but decided to do it anyway. After arriving in Minsk, on the same day we went by taxi towards friends who live close to the border. I do not know the place where those friends live. While on our way, we were stopped by border officers. They saw that we had backpacks, so they broke our phones, took us to the Lithuanian-Belarusian border and forced us to cross the border illegally ...
>
> I have friends who are lawyers in Spain and Canada. They promised to help me. I got in touch with them while I was still in Russia. We wanted to obtain a visa for humanitarian reasons. It did not matter where, Spain or Lithuania. They arranged everything through the Lithuanian Red Cross. There was a letter where we received a permission to stay in Lithuania for a month ... We were assisted on legal matters by our lawyers that I mentioned before. They explained to me that we had received permission to stay in Lithuania for a month. That was written in the letter. I do not know exactly what was written in it ...

Our main destination was Spain. My goal is not to stay in Lithuania, my goal is to reach Spain. I simply crossed the border here. I did not go to Spain because a visa is necessary there ...”

98. The second applicant stated:

“... From Cuba I went to Russia because I did not need a visa ... We decided to flee Russia because officers there constantly demanded money from us. We could stay in Russia legally for three months, then [we had to] leave and we could stay for another three months. But Russia is not a safe country, there is a lot of corruption there. While staying in Russia, I left it once. We went to Minsk, Belarus, in order to extend the visa. We spent about two days there and went back. We left Russia for the last time on March 30. We went to Minsk, Belarus. When in Minsk, we planned to go directly to Lithuania, we wanted to live in a country where one could live freely. Because of the language, I wanted to go to Spain ... but Lithuania will be fine too ...

When we arrived in Minsk, we spent an hour there, took a taxi and drove towards the border. There we tried to cross the border. One Cuban national who lives in Spain had explained to me what to do. I communicated with her using my husband’s phone, through WhatsApp. She told us where to go from Minsk and where to cross the border. As far as I know, she herself had crossed the border that way. I do not know that woman’s name, I do not remember under what name she is saved in the phone contacts. After arriving at the border, we tried to cross it. Officers stopped us. They gave us some help and returned us. That happened a couple of times – we crossed the border and were returned ... Our phones were broken by Belarusian officers six or seven days ago ...

Later, after crossing the border, we met with volunteers from the Red Cross ... We contacted a lawyer and the lawyer gave us the possibility to contact the Red Cross volunteers. That lawyer is from Canada, his name is [M.G.]. He is a friend of my sister’s, my sister lives in the USA. We contacted him because we trusted him ... He and another lawyer from Spain contacted the volunteers ... The volunteers had our phone numbers, but we were using only one phone at a time to save the battery ... When we met them in the forest, the volunteers gave us food, medication and asked us to fill in some form. They forwarded that information somewhere; I do not know where exactly. The volunteers knew our location in the forest because we had sent them our coordinates ... Afterwards we received a document allowing us to stay in Lithuania for a month. We had that document on the phone. We received it from the volunteers. I do not know exactly what kind of document it was, I only know that we can stay in Lithuania until May 6, ask for asylum and go through other procedures ...”

99. The third applicant stated:

“... I left Cuba in December 2021 ... I wanted to go to a free country which did not have relations with Cuba. I could not go to other countries because a visa was necessary. A visa was not necessary [to go to Russia] ... I participated in a protest against the war in the centre of Moscow ... I was not arrested or threatened. Police officers saw me in the protest and demanded money, they told me to pay and said that they would not do anything to me [if I pay]. We gave them the money. I left Russia on March 30, to go to Minsk, Belarus. My goal was to flee far from Cuba and from Russia. The plan was to flee to Europe, cross the border from Belarus and seek help.

When we arrived in Minsk, we exchanged some money and decided to go to the border. We hired a taxi and drove to the border. We consulted the map and ourselves decided where to cross the border. We chose the spot completely randomly. Nobody helped us. When we arrived at the border, we crossed it, but we were stopped and

returned. That happened a couple of times. While we were in Lithuania, we were helped by officers and the Red Cross volunteers.

We contacted the volunteers through our friends. These friends are lawyers who live in Canada and Spain. They are friends of my family. I contacted them personally and communicated with them through WhatsApp. They are lawyers and work in the area of migration, so they had the contact details of the volunteers ... I asked them for food, water and help with staying in the country. The volunteers came to us, they brought medication, food and showed how to lodge an application for asylum. We all filled in the form for asylum. As far as I know, the next day the request was rejected because some evidence was missing. They asked us for evidence of our location and photographs. The next day we received a document saying that we could stay in Lithuania. As far as I know, it was issued somewhere in France."

100. The fourth applicant stated:

"I left Cuba because I could not support the current government. I went to Russia, so that later I could go to some other country which was free ... I left Russia on March 30. I went to Belarus and then to Lithuania. I arrived in Lithuania after crossing the border from Belarus. I myself searched on the map where to cross the border. I travelled together with other Cubans.

When we arrived at the border, we crossed it but were returned. That happened several times. Afterwards Belarusians broke our phones. When we were in Lithuania, we contacted volunteers from the Red Cross. We got their contact details from lawyers from Spain. We contacted the volunteers and they helped us obtain a document in order to start the asylum procedure. I communicated with those volunteers personally. First we asked them for food and medication. Then we asked them how to seek asylum. They gave us some forms to fill in and we received the document which stated that we could stay in Lithuania until May 6. We met the volunteers once. Later they forwarded us that document.

In December I had travelled to Armenia, in order to be able to go back to Russia. I did not ask for asylum in Armenia because I wanted to go to Europe ..."

101. On 14 April 2022 the applicants were each provided with a certificate of receipt of an asylum application, issued in Lithuanian. Each certificate stated, *inter alia*, that the asylum application would be examined under an accelerated procedure, that the question of the asylum-seeker's admission to Lithuania was not being decided (*klausimas dėl prieglobsčio prašytojo įleidimo į Lietuvos Respublikos teritoriją nėra sprendžiamas*) and that he or she was currently at a border crossing point and was not being admitted to Lithuanian territory (*nėra įleidžiamas į teritoriją*).

2. Pre-trial investigation concerning illegal border crossing

102. On 22 April 2022 the applicants were informed that they had been placed under investigation for illegal border crossing.

103. When questioned in the course of the investigation, all four applicants said that they had decided to leave Russia because they had felt unsafe there and that they had wanted to go to Europe, where human rights were respected. After arriving at Minsk Airport, they had hired a taxi and asked to be taken to the Lithuanian border. They had crossed the border

independently, using only Google Maps on their phones. Lithuanian officials had forced them to go back to Belarus multiple times, whereas Belarusian officials had ordered them to cross into Lithuania again.

104. The third and fourth applicants stated that they had come to Lithuania with the aim of seeking political asylum and that they had said so to the Lithuanian border officers who had apprehended them for the first time, but that those officers had not listened to them and had returned them to Belarus.

105. The fourth applicant described the applicants' first encounter with the Lithuanian border guards as follows:

> "... While walking through the village, we met officers, who put us in a car and drove us further from the place where they had met us. The officers took us to the border and ordered us to go to Belarus. We asked them to let us stay and to help us, we said that we were seeking political asylum, but they did not listen to us and ordered us to go to Belarus, they threatened us with a gun."

106. All the applicants said that they regretted having crossed the border illegally but that they had done so only for their safety.

107. On 3 June 2022 the pre-trial investigation was discontinued on the grounds that the applicants' intention to seek asylum constituted grounds for exemption from criminal liability.

3. The applicants' stay at the Foreigners' Registration Centre in Medininkai

108. On 15 April 2022 the applicants were transferred to the Foreigners' Registration Centre in Medininkai (hereinafter "Medininkai FRC"), where they were accommodated in container housing. On the same day they were provided with two information leaflets in English. The first leaflet was entitled (in the original English) "Rights and responsibilities of foreigners" and provided, *inter alia*, that "foreigners [were] not allowed ... [to] leave the accommodation facilities without the permission of a protection officer". The second leaflet was entitled (in the original English) "Information sheet for foreigners that have arrived or are accommodated at the Foreigners' Registration Centre" (for its relevant content, see paragraph 156 below). The applicants confirmed with their signatures that they had received the leaflets.

109. On the same day the third applicant was examined at Medininkai FRC by the medical team of Médecins sans Frontières, which found certain injuries on her feet and ankles. On 17 April 2022 the third and fourth applicants were examined at a hospital in Vilnius. It was found that they both had injuries on their feet and ankles but no fractures or circulatory problems were detected.

110. On 16 July 2022 all four applicants sent written requests to the Migration Department stating that they had still not had interviews regarding their asylum applications, had not met their appointed lawyers and had not received any information about their legal status. They were informed on

30 August 2022 that the examination of their asylum applications had been delayed because of the heavy workload of the Migration Department.

111. On 25 July and 4 August 2022 the applicants sent requests to the authorities, asking to be transferred to a different reception facility and not to be separated. It is not clear if they received any official response.

4. The applicants' stay at the Foreigners' Registration Centre in Pabradė

112. On 5 August 2022 the third and fourth applicants and on 11 August 2022 the first and second applicants were transferred to the Foreigners' Registration Centre in Pabradė (hereinafter "Pabradė FRC"). They were accommodated in container housing until 26 September 2022 (according to the Government) or 27 September 2022 (according to the applicants), when they were transferred to dormitories.

113. On several dates in August 2022 the third and fourth applicants submitted written requests to the head of Pabradė FRC asking to be moved from container housing to dormitories, to be provided with psychological assistance and to be allowed to leave the camp. It is not clear if they received any official response.

114. According to an official report by an officer of the SBGS, on 1 September 2022 she met with over thirty aliens at Pabradė FRC, including the first, second and third applicants. The officer "familiarised them with the decisions taken by the Migration Department and the courts regarding the extension of their detention", provided them with information regarding their legal status in Lithuania, the reasons why they were being accommodated at the FRC and the internal rules of the facility.

115. According to official reports by another officer of the SBGS, she met with the four applicants on 3 October, 20 October and 10 November 2022. On each occasion the applicants were provided with information regarding, *inter alia*, their legal status in Lithuania, the reasons why they were being accommodated at the FRC and the internal rules of the facility.

116. On 17 October 2022 the Migration Department adopted decisions to admit all the applicants to Lithuania and accommodate them at Pabradė FRC (see paragraph 146 below). On 18 October 2022 all four applicants were moved to an open building at Pabradė FRC and from that date they were allowed to leave the facility for up to twenty-four hours and for up to seventy-two hours after receiving permission from the administration.

5. Other relevant facts

117. On 13 December 2022 the first and second applicants were granted permission to reside in a place of their choice. The fourth applicant received such permission on 28 December 2022 and the third applicant on 16 January

2023. They moved to accommodation of their choice on various dates in December 2022 and January 2023.

118. In January 2023 the first, second and fourth applicants signed legal services agreements with a lawyer practising in Lithuania.

119. In February and March 2023 the Migration Department granted the applicants refugee status and issued them with permanent residence permits in Lithuania.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

A. Constitution

120. The relevant provisions of the Constitution read (official translation):

Article 20

"Human liberty shall be inviolable.

No one may be arbitrarily apprehended or detained. No one may be deprived of his liberty otherwise than on the grounds and according to the procedures established by law.

A person apprehended *in flagrante delicto* must, within 48 hours, be brought before a court for the purpose of deciding, in the presence of this person, on the validity of the apprehension. If the court does not adopt a decision to detain the person, the apprehended person shall be released immediately."

Article 21

"The human person shall be inviolable.

Human dignity shall be protected by law.

It shall be prohibited to torture or injure a human being, degrade his dignity, subject him to cruel treatment, or to establish such punishments.

..."

Article 30

"A person whose constitutional rights or freedoms are violated shall have the right to apply to a court.

Compensation for material and moral damage inflicted upon a person shall be established by law."

Article 107

"A law (or part thereof) of the Republic of Lithuania or another act (or part thereof) of the Seimas, an act of the President of the Republic, or an act (or part thereof) of the Government may not be applied from the day of the official publication of the decision

of the Constitutional Court that the act in question (or part thereof) is in conflict with the Constitution of the Republic of Lithuania.

..."

Article 144

"When a threat arises to the constitutional system or social peace in the State, the Seimas may declare a state of emergency throughout the territory of the State or in any part thereof. The period of the state of emergency shall not exceed six months.

In cases of urgency, between sessions of the Seimas, the President of the Republic shall have the right to adopt a decision on the state of emergency and convene an extraordinary session of the Seimas for the consideration of this issue. The Seimas shall approve or overrule the decision of the President of the Republic.

The state of emergency shall be regulated by law."

Article 145

"Upon the imposition of martial law or the declaration of a state of emergency, the rights and freedoms specified in Articles 22, 24, 25, 32, 35, and 36 of the Constitution may temporarily be limited."

B. Law on the Legal Status of Aliens ("the Aliens Act")

121. Under Article 2 § 18^4 of the Aliens Act (no. IX-2206, enacted on 29 April 2004, with subsequent amendments), an asylum application is defined as a request made by an alien in any form to be granted asylum in Lithuania.

122. Article 86 § 1 provides, *inter alia*, that refugee status must be granted to an individual who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion, is outside the country of his or her nationality and is unable or, owing to such fear, unwilling to avail himself or herself of the protection of that country.

1. Relevant provisions of the Aliens Act prior to the amendments enacted in July-December 2021

(a) Lodging of asylum applications

123. Article 67 § 1 provided that an asylum application could be lodged: (i) at border crossing points or in areas of Lithuanian territory where the border legal regime was applicable, with the SBGS; (ii) elsewhere on Lithuanian territory, with the SBGS or the Migration Department.

(b) Asylum-seekers' rights during the asylum procedure

124. Article 71 § 1 provided that asylum-seekers had certain rights, including the right to receive, free of charge and in a language which he or

she understood, information about his or her rights and obligations during the asylum procedure and information relating to the examination of his or her asylum application and have access to State-guaranteed legal aid in connection with the examination of his or her asylum application.

(c) Admission to Lithuania and accommodation of asylum-seekers

125. Article 5 § 2 provided, *inter alia*, that aliens who had lodged asylum applications at border crossing points, in transit zones or immediately after being apprehended for illegally crossing the border were not considered to have entered Lithuanian territory until a decision was adopted to admit them to Lithuania.

126. Article 5 § 3 provided that when an alien lodged an asylum application at a border crossing point or in a transit zone, the Migration Department had to adopt a decision on admitting him or her to Lithuania within forty-eight hours, except in the cases specified in the Act where the asylum application would be examined under the accelerated procedure (see paragraph 134 below) or where there were grounds, provided for by law, for not examining it.

127. Article 5 § 6 provided that asylum-seekers who had lodged asylum applications at border crossing points or in transit zones were to be temporarily accommodated at border crossing points, in transit zones or at the SBGS until a decision to admit them to Lithuania was adopted. Article 5 § 8 provided that if a final decision on an asylum application lodged by such an asylum-seeker had not been taken within twenty-eight days, the Migration Department had to adopt a decision on admitting him or her to Lithuania.

(d) Detention of asylum-seekers and alternatives to detention

128. Article 113 § 4 provided a list of situations where an asylum-seeker could be detained, including where it was necessary to establish and/or verify his or her identity and/or nationality; to determine the grounds on which the asylum application was based, if such information could not be obtained without detaining the asylum-seeker and there were grounds for believing that he or she might hide to avoid being returned or expelled from Lithuania; to transfer him or her to the EU member State responsible for examining the asylum application in accordance with the relevant EU law; or if the asylum-seeker posed a threat to national security or public order.

129. Article 115 §§ 1 and 2 provided that if an alien's identity had been established, he or she did not pose a threat to national security or public order and cooperated with the authorities in establishing his or her legal status in Lithuania and other relevant circumstances, the court could order one of the alternatives to detention provided by law, such as ordering the alien to report regularly to the Migration Department or the SBGS or to regularly inform them of his or her whereabouts by electronic means of communication;

accommodating the alien at the SBGS without restrictions on his or her freedom of movement; or accommodating the alien at the SBGS without allowing him or her to leave that facility.

130. Article 114 § 1 provided, *inter alia*, that an alien could be detained for a maximum of forty-eight hours by written decision of a law enforcement officer. Article 116 § 1 provided that if there were grounds for detaining an alien for more than forty-eight hours or for applying an alternative to detention, that decision had to be taken by the relevant District Court. The alien was required to be present at the court hearing and was entitled to State-guaranteed legal aid.

131. Article 117 § 1 provided, *inter alia*, that the alien could lodge an appeal with the Supreme Administrative Court against the decision to detain him or her, to extend his or her detention or to order an alternative to detention. Article 117 § 2 provided that the court had to examine such appeals within ten working days.

(e) Appeals against decisions taken under the Aliens Act

132. Article 137 § 1 and Article 138 § 1 provided that appeals against decisions taken in accordance with the Aliens Act could be lodged with the relevant Regional Administrative Court within fourteen days after receipt of the decision.

133. Article 139 § 1 provided that an appeal against a decision had suspensive effect in the following cases: (i) where the decision concerned the revocation of the alien's residence permit; (ii) where an asylum application lodged by an alien who had arrived from a safe third country had not been examined on the merits and he or she was being returned or expelled to that country; (iii) where the alien's asylum application had been rejected, except in cases where the asylum application had been examined under the accelerated procedure.

(f) Other relevant provisions

134. Article 76 § 4 provided a list of situations where an asylum application would be examined under an accelerated procedure, including the following: where the alien had come from a safe country of origin; where the asylum application did not contain any information relevant for the granting of asylum; where the alien, in order to mislead the authorities, provided false information about his or her identity or nationality or submitted false documents that could have a significant influence on the decision to grant asylum; or where the asylum application was based on information which was inconsistent, contradictory or misleading.

135. Article 81 § 2 provided that an asylum application which was examined under an accelerated procedure (see paragraph 134 above) had to

be examined within ten working days after it had been lodged or after the grounds for applying the accelerated procedure had been identified.

136. Article 128 § 2 (5) provided that the execution of the decision to expel an alien had to be suspended if the European Court of Human Rights indicated interim measures under Rule 39 of the Rules of Court and ordered that the alien should not be expelled.

2. Amendment of 13 July 2021

137. The amendment to the Aliens Act of 13 July 2021, which entered into force on 23 July 2021, amended, *inter alia*, Article 5 §§ 6 and 8 (see paragraph 127 above). Following that amendment, Article 5 § 6 provided, *inter alia*, that after the declaration of a state of war, a state of emergency or an extraordinary situation due to a mass influx of aliens, asylum-seekers who had lodged asylum applications at border crossing points, in transit zones or immediately after illegally crossing the Lithuanian border were to be temporarily accommodated at border crossing points, in transit zones, at the SBGS or in other suitable places without the right to freedom of movement on Lithuanian territory, until a decision was adopted to admit them to Lithuania. The amended Article 5 § 8 provided, *inter alia*, that after the declaration of a state of war, a state of emergency or an extraordinary situation due to a mass influx of aliens, the Migration Department had to adopt a decision on admitting the asylum-seeker to Lithuanian territory if the final decision on his or her asylum application had not been taken within twenty-eight days of the end of the state of war, state of emergency or extraordinary situation, but no later than within six months after the start of the temporary accommodation.

3. Amendment of 10 August 2021

138. The amendment to the Aliens Act of 10 August 2021, which entered into force on 12 August 2021, introduced a new regulation on the places where an asylum application could be lodged (see paragraph 123 above). Under the amended Article 67 § 1^1, after the declaration of a state of war, a state of emergency or an extraordinary situation due to a mass influx of aliens, an asylum application could be lodged (i) at border crossing points or in transit zones, with the SBGS; (ii) on the territory of Lithuania, provided that the alien had arrived there legally, with the Migration Department; and (iii) abroad, with Lithuanian diplomatic missions and consulates designated by the Minister of Foreign Affairs. Under the amended Article 67 § 1^2, an asylum application which had not been lodged in accordance with Article 67 § 1^1 would not be accepted and the alien would have to be informed of the procedure for lodging such an application. The SBGS could still decide to accept an asylum application lodged by an alien who had

crossed the border illegally, having regard to his or her vulnerability or other individual circumstances.

4. Amendment of 23 December 2021

139. The amendment to the Aliens Act of 23 December 2021, which entered into force on 1 January 2022, revoked the aforementioned provisions introduced by the amendments of 13 July and 10 August 2021 (see paragraphs 137 and 138 above). In addition to other amendments, it introduced a new Chapter X^2, consisting of Articles 140^7 to 140^{26}, which were applicable after the declaration of a state of war, a state of emergency or an extraordinary situation due to a mass influx of aliens. Other provisions of the Aliens Act remained applicable to matters not regulated by Chapter X^2.

(a) Lodging of asylum applications

140. Article 140^{11} § 1 provided that aliens had the right to seek and obtain asylum in Lithuania in accordance with the procedure established by the Act. If there were indications that an alien at a border crossing point or in a transit zone might wish to seek asylum, he or she had to be provided with information, in a language which he or she understood, about that right and the applicable procedures.

141. Article 140^{12} § 1 provided that asylum applications could be lodged: (i) at border crossing points or in transit zones, with the SBGS; (ii) on the territory of Lithuania, provided that the alien had arrived there legally, with the Migration Department; and (iii) abroad, with Lithuanian diplomatic missions and consulates.

142. Article 140^{12} § 2 provided that an asylum application not lodged in compliance with the procedure established by Article 140^{12} § 1 (see paragraph 141 above) would not be accepted and that the alien would be informed of the correct procedure to be followed. The SBGS could accept an asylum application lodged by an alien who had entered Lithuania illegally, having regard to his or her vulnerability or other individual circumstances.

(b) Asylum-seekers' rights during the asylum procedure

143. Article 140^{13} § 2 stated, *inter alia*, that the rights of asylum-seekers provided for in Article 71 of the Act (see paragraph 124 above) could be limited temporarily and proportionately if they could not be ensured for objective and justified reasons, with the exception, *inter alia*, of the right to receive, free of charge and in a language which they understood, information about their rights and obligations and about the examination of their asylum applications, and the right to receive free legal aid in connection with the examination of their asylum applications.

(c) Admission to Lithuania and accommodation of asylum-seekers

144. Article 140^8 § 2 provided, *inter alia*, that where an asylum-seeker lodged an asylum application at a border crossing point or in a transit zone, the Migration Department had to adopt a decision on admitting him or her to Lithuania within forty-eight hours, except in the cases specified in the Act where the asylum application would be examined under the accelerated procedure (see paragraph 134 above) or where there were grounds for not examining it.

145. Article 140^8 § 3 provided, *inter alia*, that asylum-seekers who had lodged asylum applications at border crossing points or in transit zones were to be temporarily accommodated by the SBGS at border crossing points, in transit zones, at the SBGS, at the Refugees' Reception Centre or in other places of temporary accommodation without the right to freedom of movement on the territory of Lithuania, until the Migration Department adopted a decision to admit them to Lithuania.

146. Article 140^8 § 5 provided that if the final decision on the legal status of an asylum-seeker had not been adopted during a state of war, state of emergency or extraordinary situation due to a mass influx of aliens and within twenty-eight days of the end of that period, but no longer than six months after he or she had been registered in the Lithuanian migration information system, the Migration Department had to adopt a decision on admitting the asylum-seeker to Lithuania and accommodating him or her in one of the places specified in Article 140^8 § 3 (see paragraph 145 above).

147. Article 140^8 § 9 provided that an appeal could be lodged with a District Court against certain measures taken under Article 140^8. This did not include the measures under Article 140^8 § 3 (see paragraph 145 above).

(d) Detention of asylum-seekers and alternatives to detention

148. Article 140^{17} provided that an asylum-seeker could be detained if any of the grounds listed in Article 113 § 4 of the Aliens Act was present (see paragraph 128 above) or if he or she had arrived in Lithuania illegally.

149. Article 140^{19} § 1 provided for alternatives to detention. These included (i) those specified in Article 115 (see paragraph 129 above); (ii) accommodating the alien at the SBGS or in another suitable place without restrictions on his or her freedom of movement; and (iii) accommodating the alien at the SBGS or in another suitable place without granting him or her the right to leave that facility.

150. Article 140^{20} § 1 provided that if there were grounds for detaining an alien for more than forty-eight hours or for applying an alternative to detention, that decision had to be taken by the relevant District Court. The alien was required to be present at the court hearing and was entitled to State-guaranteed legal aid.

(e) Appeals against decisions taken under the Aliens Act

151. Article 139 § 1 (see paragraph 133 above) was amended to include two new instances in which an appeal lodged against a decision had suspensive effect: (i) where it had been decided to discontinue the examination of an asylum application and expel or return the alien from Lithuania; and (ii) where it had been decided to annul the asylum previously granted to an alien and to expel or return him or her from Lithuania.

5. Amendment of 20 April 2023

152. The amendment to the Aliens Act of 20 April 2023, which entered into force on 3 May 2023, amended Article 140^{12} § 1 (see paragraph 141 above). Following the amendment, Article 140^{12} § 1 provided that asylum applications could be lodged (i) at border crossing points or in transit zones, with the SBGS; (ii) on the territory of Lithuania, with the Migration Department or the SBGS; and (iii) abroad, with Lithuanian diplomatic missions and consulates. The amendment revoked, *inter alia*, Article 140^{12} § 2 (see paragraph 142 above) and Article 140^{17} (see paragraph 148 above).

153. The amended Article 140^{8} § 3 (see paragraph 145 above) provided that the Migration Department had to adopt a decision on temporarily accommodating an asylum-seeker at a border crossing point, in a transit zone, at the SBGS, at the Refugees' Reception Centre or in other places of temporary accommodation without granting him or her the right to freedom of movement within the territory of Lithuania.

154. The amended Article 140^{8} § 9 provided that decisions taken under Article 140^{8} § 3 (see paragraph 153 above) were amenable to appeal before a District Court within fourteen days from receipt by the asylum-seeker of the decision in question.

C. Legal instruments adopted in connection with the extraordinary situation and the state of emergency

1. Minister of Foreign Affairs' order on lodging asylum applications with Lithuanian diplomatic missions and consulates

155. Order no. V-393 on the lodging of asylum applications by aliens, approved by the Minister of Foreign Affairs on 21 September 2021, states that asylum applications may be lodged with the Lithuanian embassy in Belarus and that its head must determine the method and time of lodging such applications and appoint an employee responsible for transferring them to the Migration Department.

2. Information sheet provided to the aliens accommodated at Medininkai FRC

156. At the material time, aliens accommodated at Medininkai FRC were provided with the following information sheet (in the original English):

"...

INFORMATION SHEET
FOR FOREIGNERS THAT HAVE ARRIVED OR ARE ACCOMMODATED AT THE FOREIGNERS' REGISTRATION CENTRE

...

II. PERSONS ACCOMMODATED AT THE CENTRE

3. The centre accommodates the following persons:

3.1. foreigners that have come or stay in the Republic of Lithuania illegally (hereinafter – detained foreigners) – according to court's ruling;

3.2. detained foreigners that have submitted applications for asylum in the Republic of Lithuania (hereinafter – detained asylum-seekers) – according to court's ruling;

3.3. foreigners that have come themselves, submitted applications for asylum in the Republic of Lithuania and stay at the centre until the Migration Department under the Ministry of the Interior (hereinafter – Migration Department) makes the decision, whether to grant them temporary territorial asylum in the Republic of Lithuania, or not – according to the decision of the Head of the centre;

3.4. foreigners that have submitted applications for asylum to other law enforcement institutions in the Republic of Lithuania (hereinafter – asylum seekers) – according to the decision of the Migration Department or court;

3.5. asylum seekers that have come to Lithuania legally and were provided with temporary territorial asylum – according to the decision of the Migration Department.

...

IV. LENGTH OF ACCOMMODATION AT THE CENTRE

14. A foreigner cannot be detained for more than 6 months, except for cases, when he/she does not cooperate in the process of attempting to send him/her away from the Republic of Lithuania (refuses to provide personal data, provides misleading information, etc.) or when the documents required to send such a foreigner away are not received. In these cases the detention period can be extended for an additional period of time, which is not longer than 12 months.

V. RIGHTS, DUTIES, RESTRICTIONS AND PROHIBITIONS FOR THE FOREIGNERS, ACCOMMODATED AT THE CENTRE

15. Rights of the foreigners, accommodated at the centre:

...

15.2. to get information on one's legal status in the Republic of Lithuania;

15.3. to get legal support, guaranteed by the state;

...

15.18. to get in touch with appropriate competent state institutions, international and non-governmental organisations and institutions;

16. Aside from the rights, indicated in the pt. 15, asylum seekers and detained asylum seekers also have the following rights, related to the provision of asylum:

...

16.7. to receive information about their rights and duties, as well as consequences of failure to implement that during the examination of the application for an asylum, also information, related to the examination of the application for an asylum free of charge;

...

21. Foreigners, accommodated at the centre cannot:

...

21.6. leave the territory of the centre without permission;

...

21.19. to leave the residential and other territories of the centre without permission (except for asylum seekers, who can leave the centre according to these rules);

...

VIII. ASYLUM SEEKERS, TEMPORARILY LEAVING THE CENTRE

43. Foreigners, accommodated at the centre, whose freedom of movement has not been restricted, can leave the centre without the permission of the administration for no longer than 24 hours.

44. Foreigners, accommodated at the centre, whose freedom of movement is restricted and who are not subjected to alternative detention measures, applied by the court – accommodation at the centre, may leave the centre for up to 72 hours with a permission of the head of the centre or an authorised officer.

...

46. A foreigner, whose freedom of movement has been restricted, may submit a request to leave the centre for up to 24 hours by coming to the receptionist.

..."

D. Case-law of the Constitutional Court

157. On 7 June 2023 the Constitutional Court issued ruling no. KT53-A-N6/2023 in a case in which it examined, *inter alia*, whether Article 5 §§ 6 and 8 of the Aliens Act, as amended on 13 July 2021 (see paragraph 137 above), and Article 140^8 §§ 3 and 5 of the Aliens Act, as amended on 23 December 2022 (see paragraphs 145 and 146 above), complied with the Constitution.

158. The Constitutional Court observed that, under the impugned provisions of the Aliens Act, after the declaration of a state of war, a state of emergency or an extraordinary situation due to a mass influx of aliens,

asylum-seekers were to be temporarily accommodated at the relevant facilities for up to six months without the right to leave, solely because they had lodged asylum applications that had not yet been examined. The Constitutional Court considered that the impugned measure, in view of the intensity of the restriction of a person's liberty and its duration, could amount to *de facto* detention.

159. It emphasised that the Constitution permitted the restriction of a person's liberty only if the following conditions were fulfilled: the restriction had to be provided for by law; it had to be necessary in a democratic society for the protection of the rights and freedoms of others, the values enshrined in the Constitution or other aims of constitutional importance; it could not impair the very essence of the rights and freedoms at issue; it had to be proportionate; and the law had to provide for the possibility of assessing, as far as possible, the individual situation of each person, and of properly individualising the restriction of his or her rights. Moreover, the protection of the general interest could not deny the rights of the individual, but a fair balance had to be struck between those two constitutional values.

160. The Constitutional Court acknowledged that the right to personal liberty enshrined in Article 20 of the Constitution was not absolute and could be restricted in certain circumstances. However, such restrictions could not be based on grounds of a general nature, such as the declaration of a state of emergency, without an assessment of the actual risk which an individual might pose and which could justify the restriction of his or her liberty.

161. It further held that the right to personal liberty was inseparable from the right of access to a court enshrined in Article 30 of the Constitution; under Article 145, the right of access to a court could not be restricted even after the declaration of a state of war or a state of emergency (see paragraph 120 above).

162. Moreover, the Constitutional Court emphasised that the Constitution had to be interpreted taking into account, *inter alia*, the relevant EU law and referred to a number of decisions issued by the Court of Justice of the European Union (CJEU) in cases concerning detention of asylum-seekers, including the preliminary ruling in the case of *Valstybės sienos apsaugos tarnyba and Others* (C-72/22 PPU; see paragraphs 184-186 below).

163. In the light of the foregoing, the Constitutional Court concluded that Article 5 §§ 6 and 8 of the Aliens Act, as amended on 13 July 2021 (see paragraph 137 above), and Article 140^8 §§ 3 and 5 of the Aliens Act, as amended on 23 December 2022 (see paragraphs 145 and 146 above), were contrary to Article 20 of the Constitution (see paragraph 120 above) in that they allowed a person to be deprived of his or her liberty for six months without any individual decision being adopted, without an assessment of his or her personal circumstances and the possibility of applying less coercive measures, and without any possibility of appeal before a court. The court emphasised that a state of emergency or an extraordinary situation due to a

mass influx of aliens did not, *per se*, constitute grounds for subjecting all asylum-seekers to the most coercive restriction of their liberty, without an assessment of their individual situation and of the risk which they might pose to the State and society.

164. Lastly, the Constitutional Court held that Article 140^8 § 3 of the Aliens Act, as amended on 20 April 2023 (see paragraph 153 above), was also contrary to Article 20 of the Constitution in so far as it provided that, after the declaration of a state of war, a state of emergency or an extraordinary situation, all asylum-seekers were to be temporarily accommodated without the right to freedom of movement and without an assessment of their personal circumstances and the possibility of applying more lenient measures.

E. Case-law of the Supreme Administrative Court

165. In a decision of 6 October 2021 in case no. AS-653-492/2021, the Supreme Administrative Court examined a complaint lodged by an individual who had entered Lithuanian territory illegally and had been temporarily accommodated at a border crossing point without the right to freedom of movement. She complained that she had been detained without a court order and asked to be released from detention. The first-instance court refused to accept the complaint for examination, stating that she had not been detained within the meaning of the Aliens Act. The Supreme Administrative Court quashed that decision. It held that, although Article 5 § 6 of the Aliens Act (see paragraph 137 above) did not explicitly provide for the possibility of appeal against decisions concerning the temporary accommodation of aliens, the right of access to a court was guaranteed by Article 30 of the Constitution and by the case-law of the European Court of Human Rights and the CJEU. Accordingly, the claimant had to be provided with an effective right of access to a court to examine whether the decision to temporarily accommodate her without the right to freedom of movement was lawful and justified. The Supreme Administrative Court also emphasised that Article 145 of the Constitution, which provided for the possibility of restricting certain rights after the declaration of a state of war or state of emergency, did not provide for the possibility of such restrictions with respect to the right of access to a court (see paragraph 120 above). The Supreme Administrative Court further held that the fact that the measure imposed on the claimant was considered temporary accommodation under domestic law did not mean that it could not amount to *de facto* detention or a measure alternative to detention; whether that was so in the case at hand had to be determined in the light of her individual situation. Accordingly, it remitted the case to the first-instance court and instructed it to examine whether the claimant was in fact detained, and if so, whether the detention was justified. In this connection, the Supreme Administrative Court emphasised that detention could only be used as a

measure of last resort, where the legitimate aims pursued could not be achieved by other measures.

166. In a decision of 18 November 2021 in case no. A-4180-629/2021, a decision of 15 December 2021 in case no. A-4270-492/2021, a decision of 16 December 2021 in case no. A-4322-602/2021 and a decision of 19 January 2023 in case no. A-1289-602/2023 the Supreme Administrative Court reiterated its finding that, even though Article 5 § 6 of the Aliens Act (from 1 January 2022, Article 140^8 of the Aliens Act, see paragraphs 145 and 147 above) did not explicitly provide for the possibility of appeal against decisions concerning the temporary accommodation of aliens, an alien had to be provided with an effective right of access to a court to examine whether the decision to temporarily accommodate him or her without the right of freedom of movement was lawful and justified.

167. In a decision of 18 November 2021 in case no. A-4180-629/2021 the Supreme Administrative Court examined a complaint lodged by an individual who had been temporarily accommodated without the right to freedom of movement; the claimant asked that an alternative to detention be applied in her case and that she be allowed to live in a place of her choice. The first-instance court dismissed the complaint, holding that, under the Aliens Act, an alien who had been temporarily accommodated on the basis of the Act itself and not a court order did not have the right to request an alternative to detention. The Supreme Administrative Court quashed that decision and remitted the case to the first-instance court for fresh examination. It stated that the fact that the restriction on the claimant's liberty had been imposed without a court order could not constitute grounds for preventing her from defending her rights in court. It held that the first-instance court had to examine whether the claimant was in fact detained, and if so, whether the detention was justified and whether there were grounds for applying an alternative to detention.

168. In a decision of 15 December 2021 in case no. A-4270-492/2021, a decision of 16 December 2021 in case no. A-4322-602/2021 and a decision of 25 February 2022 in case no. A-1484-624/2022 the Supreme Administrative Court found that accommodation of an alien in a camp of container housing, where he or she had the right to move within the camp, communicate with other people accommodated there and meet his or her lawyer, did not amount to detention but to one of the alternatives to detention provided for in Article 115 § 2 of the Aliens Act (see paragraph 129 above). In the first of the aforementioned decisions, it held that it was important to assess whether the restriction on the alien's freedom of movement was necessary and proportionate to the aim pursued by the relevant law – namely, to examine the alien's legal status in Lithuania promptly and duly. The Supreme Administrative Court emphasised that the principle of proportionality required striking a fair balance between, on the one hand, the individual's right to liberty and security, and on the other hand, the aims

sought in the general interest. In particular, it had to be assessed whether those aims could be achieved by more lenient measures. An alien's vulnerability, particular needs and the availability of medical or other necessary assistance in the place of accommodation were among the circumstances relevant for such an assessment. At the same time, the court noted that, under Article 5 § 6 of the Aliens Act (see paragraph 137 above), the legislature had not granted aliens who had not been officially admitted to Lithuania the right to freedom of movement within that territory. Therefore, in such cases, alternatives to detention which did not include restrictions on freedom of movement could be applied only in exceptional circumstances.

169. In a decision of 28 July 2022 in case no. A-1091-822/2022, on which the CJEU had issued a preliminary ruling (*Valstybės sienos apsaugos tarnyba and Others* (C-72/22 PPU) – see paragraphs 184-186 below), the Supreme Administrative Court held that although temporary accommodation at the SBGS with the right to move within the relevant facility was considered under domestic law to be an alternative to detention, a person subjected to that measure was separated from others and did not have freedom of movement; he or she was therefore detained within the meaning of the EU law. The court emphasised that detention could not be justified by the mere fact that the person had arrived in Lithuania illegally, nor did illegal entry in itself demonstrate that a person might pose a risk to national security or public order, in the absence of other circumstances indicating the existence of such a risk in that particular case.

F. Report by the *Seimas* Ombudspersons' Office

170. On 7 October 2021 the *Seimas* Ombudspersons' Office issued a document entitled "Report on ensuring human rights and freedoms in places of temporary accommodation of foreigners having crossed the border between Lithuania and Belarus", based on inspections conducted by its staff and experts at several border posts and border crossing points and interviews with, *inter alia*, relevant officials and aliens apprehended at the border.

171. The part of the report concerning access to the asylum procedure at the border reads as follows (references omitted):

> "8.2. Inspections showed that:
>
> ...
>
> 8.2.5. [D]uring the night shift at the border section between Lithuania and Belarus (at State border sign 134-135) on 6 August 2021, persons, including a woman with a minor child, who had crossed the State border at illegal locations and expressed a wish to seek asylum in Lithuania, were not admitted to the territory of the country using psychological measures (hand gestures and a dog). It should be noted that these persons were not directed to the nearest operating international border crossing point or diplomatic mission of the Republic of Lithuania, but were guided back towards the Republic of Belarus. The officials ... did not provide the above-mentioned persons with

any information on the procedure for lodging asylum applications with the SBGS in the Republic of Lithuania ...

During the same night shift at the border section between Lithuania and Belarus (at State border sign 129), SBGS officials did not allow a group of 34 persons, 15 of whom were minors, to enter the country. Taking into account the fact that the Belarusian border guards standing on the other side of the border would not allow these persons to return to Belarus, the SBGS officials took them by minibus to State border sign 125-126, where they alighted and were escorted towards Belarus.

...

On 9 August 2021, the Šalčininkai police found 11 foreigners, including 4 minors, 3 women and 4 men ... Despite the fact that one man asked for medical help, the foreigners were tired and thirsty and the children were scared and crying, Lithuanian border guards and volunteer soldiers collected their mobile phones and returned the foreigners to Belarus. It should be noted that these people were not provided with any information on the procedure for lodging asylum applications with the SBGS in Lithuania ...

8.2.6. SBGS officials said that Belarusian officials did not allow people intending to cross the border of the Republic of Lithuania to return to Belarus. Moreover, Belarusian officials took active measures to push migrants to Lithuania. As a result, people get stuck at the Lithuanian-Belarusian border for a long time, suffering torture and inhuman conditions due to cold [and a] lack of food, drinking water, warm clothes, shoes; ...

...

8.3. It must be stated that foreigners have not been provided with information on the right to seek asylum in the Republic of Lithuania and the procedures applicable therein or it has been provided improperly, deterrent actions have been taken against persons at the border of Lithuania to direct them towards Belarus without making sure that they are not at risk of torture, inhuman or degrading treatment or that there are no risk factors which endanger the life or health of these persons, including by denying them the opportunity to legally apply for asylum in Lithuania, which violates the right of persons to seek and enjoy asylum from persecution in other countries, creating conditions equivalent to torture and inhuman or degrading treatment ..."

II. INTERNATIONAL LAW AND PRACTICE

A. United Nations

172. The relevant provisions of the treaties and other documents adopted within the framework of the United Nations have been summarised in *N.D. and N.T. v. Spain* ([GC], nos. 8675/15 and 8697/15, §§ 60-67, 13 February 2020).

B. Council of Europe

173. The relevant parts of the thirty-second General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), published in March 2023, provide as follows (references omitted):

"...

90. In the CPT's view, there must be effective procedures in place to ensure that foreign nationals intercepted or apprehended at the border and/or entering the country are individually identified and registered, undergo health screening and a vulnerability assessment, and are offered the opportunity to apply for asylum. They should also receive individualised removal orders and be placed in a position to effectively make use of the legal remedies available against their forced removal, based on an individual assessment of the prima facie risk of ill-treatment in the case of removal. By effectively granting these procedural safeguards to foreign nationals deprived of their liberty under immigration legislation, states can ensure that the risk of ill-treatment and refoulement contrary to Article 3 is significantly reduced.

...

96. A significant challenge relates to the attempt by certain Council of Europe member states to introduce measures that aim to legalise pushback practices. These include:

- Adopting national legislation legalising pushbacks, often in the context of applying national emergency measures to prevent large numbers of foreign nationals from crossing their borders. This notably includes measures to allow for the temporary suspension of asylum applications (or the increased use of the 'safe third country' concept) and automatic forced removal of all intercepted or apprehended foreign nationals, without an assessment of their individual situation. It also comprises the introduction of new criminal offences for unlawful border crossings, allowing for the imprisonment and/or mandatory expulsion of foreign nationals. These measures expose persons to possible treatment contrary to Article 3 of the Convention, as they do not allow them to present their individual claims.

...

97. What is common in these measures is that they greatly increase the potential for informal pushback practices with a concrete risk that this might lead to violations of the principle of non-refoulement and, ultimately, of the prohibition of torture and other forms of ill-treatment. Whatever measures Council of Europe member states introduce to prevent foreign nationals from crossing their borders or to justify removals, states are bound by their non-derogable, peremptory obligations under Article 3 of the Convention.

..."

III. EUROPEAN UNION LAW AND PRACTICE

A. Treaty on European Union (TEU) and Treaty on the Functioning of the European Union (TFEU)

174. The relevant provisions of the TEU and the TFEU have been summarised in *N.D. and N.T. v. Spain* (cited above, §§ 41 and 43).

B. Charter of Fundamental Rights of the European Union

175. The relevant provisions of the Charter read as follows:

Article 4 – Prohibition of torture and inhuman or degrading treatment or punishment

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 18 – Right to asylum

"The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community."

Article 19 – Protection in the event of removal, expulsion or extradition

"1. Collective expulsions are prohibited.

2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment."

C. Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (codification)

176. The relevant provisions of the Schengen Borders Code read as follows:

"THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

...

Whereas:

...

(6) Border control is in the interest not only of the Member State at whose external borders it is carried out but of all Member States which have abolished internal border control. Border control should help to combat illegal immigration and trafficking in human beings and to prevent any threat to the Member States' internal security, public policy, public health and international relations.

..."

Article 1 – Subject matter and principles

"This Regulation provides for the absence of border control of persons crossing the internal borders between the Member States of the Union.

It lays down rules governing border control of persons crossing the external borders of the Member States of the Union."

Article 3 – Scope

"This Regulation shall apply to any person crossing the internal or external borders of Member States, without prejudice to:

...

(b) the rights of refugees and persons requesting international protection, in particular as regards *non-refoulement*."

Article 4 – Fundamental Rights

"When applying this Regulation, Member States shall act in full compliance with relevant Union law, including the Charter of Fundamental Rights of the European Union ('the Charter), relevant international law, including the Convention Relating to the Status of Refugees done at Geneva on 28 July 1951 ('the Geneva Convention'), obligations related to access to international protection, in particular the principle of *non-refoulement*, and fundamental rights. In accordance with the general principles of Union law, decisions under this Regulation shall be taken on an individual basis."

Article 5 – Crossing of external borders

"1. External borders may be crossed only at border crossing points and during the fixed opening hours. The opening hours shall be clearly indicated at border crossing points which are not open 24 hours a day.

...

3. Without prejudice to the exceptions provided for in paragraph 2 or to their international protection obligations, Member States shall introduce penalties, in accordance with their national law, for the unauthorised crossing of external borders at places other than border crossing points or at times other than the fixed opening hours. Those penalties shall be effective, proportionate and dissuasive."

Article 6 – Entry conditions for third-country nationals

"...

5. By way of derogation from paragraph 1:

...

(c) third-country nationals who do not fulfil one or more of the conditions laid down in paragraph 1 may be authorised by a Member State to enter its territory on humanitarian grounds, on grounds of national interest or because of international obligations. ..."

Article 7 – Conduct of border checks

"1. Border guards shall, in the performance of their duties, fully respect human dignity, in particular in cases involving vulnerable persons.

Any measures taken in the performance of their duties shall be proportionate to the objectives pursued by such measures.

2. While carrying out border checks, border guards shall not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation."

Article 8 – Border checks on persons

"1. Cross-border movement at external borders shall be subject to checks by border guards. Checks shall be carried out in accordance with this chapter.

...

2. All persons shall undergo a minimum check in order to establish their identities on the basis of the production or presentation of their travel documents. Such a minimum check shall consist of a rapid and straightforward verification, where appropriate by using technical devices and by consulting, in the relevant databases, information exclusively on stolen, misappropriated, lost and invalidated documents, of the validity of the document authorising the legitimate holder to cross the border ...

3. On entry and exit, third-country nationals shall be subject to thorough checks ..."

Article 13 – Border surveillance

"1. The main purpose of border surveillance shall be to prevent unauthorised border crossings, to counter cross-border criminality and to take measures against persons who have crossed the border illegally.

..."

Article 14 – Refusal of entry

"1. A third-country national who does not fulfil all the entry conditions laid down in Article 6(1) and does not belong to the categories of persons referred to in Article 6(5) shall be refused entry to the territories of the Member States. This shall be without prejudice to the application of special provisions concerning the right of asylum and to international protection or the issue of long-stay visas.

..."

177. Regulation (EU) 2024/1717 of the European Parliament and of the Council of 13 June 2024 amending Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders, which entered into force on 10 July 2024, provides as follows:

"THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

...

(12) It is also necessary to reinforce the rules and safeguards in Union law in order to allow Member States to act swiftly to counter situations of instrumentalisation. Such instrumentalisation should be understood within the meaning of Article 1(4), point (b), first sentence, of Regulation (EU) 2024/1359 of the European Parliament and of the Council. Situations in which hostile non-state actors are involved in organised crime, in particular migrant smuggling, should not be considered as instrumentalisation of migrants when there is no aim to destabilise the Union or a Member State. Furthermore, humanitarian assistance should not be considered as instrumentalisation of migrants when there is no aim to destabilise the Union or a Member State.

...

(14) In particular, in a situation of instrumentalisation, it should, where necessary, be possible for the Member State concerned to limit border traffic to the minimum by temporarily closing some border crossing points, while guaranteeing genuine and effective access to international protection procedures. Any such decision should take into account whether the European Council has acknowledged that the Union or one or more of its Member States are facing a situation of instrumentalisation of migrants.

Furthermore, any such limitations should take full account of the rights of Union citizens, third-country nationals who are beneficiaries of the right of free movement pursuant an international agreement and third-country nationals who are long-term residents under national or Union law or are holders of long-stay visas, as well as their respective family members. Such limitations should also be applied in a manner that ensures that obligations related to access to international protection, in particular the principle of non-refoulement, are respected.

..."

Article 1

"Regulation (EU) 2016/399 is amended as follows:

...

(2) in Article 5, the following subparagraph is added to paragraph 3:

"Member States may, where a large number of migrants attempt to cross their external borders in an unauthorised manner, en masse and using force, take the necessary measures to preserve security, law and order."

(3) in Article 5, the following paragraph is added:

"4. Member States may, in particular in a situation of instrumentalisation of migrants as referred to in Article 1(4), point (b) first sentence of Regulation (EU) 2024/1359 of the European Parliament and of the Council, temporarily close, or limit the opening hours of, specific border crossing points as notified pursuant to paragraph 1, second subparagraph of this Article, where the circumstances so require.

Any measures pursuant to the first subparagraph of this paragraph and paragraph 3, second subparagraph of this Article, shall be implemented in a manner that is proportionate and that takes full account of the rights of:

...

(c) third-country nationals seeking international protection. ..."

... "

D. Access to the procedure for international protection

1. Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) ("the Asylum Procedures Directive")

178. The relevant provisions of the Asylum Procedures Directive read as follows:

Article 6 – Access to the procedure

"1. When a person makes an application for international protection to an authority competent under national law for registering such applications, the registration shall take place no later than three working days after the application is made.

If the application for international protection is made to other authorities which are likely to receive such applications, but not competent for the registration under national law, Member States shall ensure that the registration shall take place no later than six working days after the application is made.

Member States shall ensure that those other authorities which are likely to receive applications for international protection such as the police, border guards, immigration authorities and personnel of detention facilities have the relevant information and that their personnel receive the necessary level of training which is appropriate to their tasks and responsibilities and instructions to inform applicants as to where and how applications for international protection may be lodged.

2. Member States shall ensure that a person who has made an application for international protection has an effective opportunity to lodge it as soon as possible. ...

3. Without prejudice to paragraph 2, Member States may require that applications for international protection be lodged in person and/or at a designated place.

...

5. Where simultaneous applications for international protection by a large number of third-country nationals or stateless persons make it very difficult in practice to respect the time limit laid down in paragraph 1, Member States may provide for that time limit to be extended to 10 working days."

Article 7 – Applications made on behalf of dependants or minors

"1. Member States shall ensure that each adult with legal capacity has the right to make an application for international protection on his or her own behalf.

..."

Article 9 – Right to remain in the Member State pending the examination of the application

"1. Applicants shall be allowed to remain in the Member State, for the sole purpose of the procedure, until the determining authority has made a decision in accordance with the procedures at first instance set out in Chapter III. That right to remain shall not constitute an entitlement to a residence permit.

..."

2. Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU

179. Regulation (EU) 2024/1348, which became applicable on 12 June 2026, provides, in relevant part:

Article 26 – Making an application for international protection

"1. An application for international protection shall be considered to have been made when a third-country national or stateless person, including an unaccompanied minor, expresses in person to a competent authority as referred to in Article 4(1) and (2) a wish to receive international protection from a Member State.

Where officials from the competent authority have doubts as to whether a certain declaration is to be construed as an application for international protection, they shall ask the person expressly whether he or she wishes to receive international protection.

..."

Article 27 – Registering applications for international protection

"1. Without prejudice to the obligations to collect and transmit data in accordance with Article 15(1) Regulation (EU) 2024/1358, the authorities competent for registering applications, the authorities of another Member State referred to in Article 5(1), point (b) of this Regulation or the experts deployed by the Asylum Agency which assist them with that task shall register an application promptly and, in any event, no later than five days from when it is made ...

..."

Article 28 – Lodging an application for international protection

"1. The applicant shall lodge the application with the competent authority of the Member State where the application is made as soon as possible and no later than 21 days from when the application is registered, unless paragraph 6 of this Article applies, provided that he or she is given an effective opportunity to do so in accordance with this Article ...

...

3. The application shall be lodged in person at a designated date and place and, where communicated, time. The competent authorities shall communicate that date and place to the applicant. The competent authorities may communicate a time to the applicant.

..."

3. Regulation (EU) 2024/1356 of the European Parliament and of the Council of 14 May 2024 introducing the screening of third-country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817

180. Regulation (EU) 2024/1356, which became applicable on 12 June 2026, provides in relevant part:

Article 5 – Screening at the external border

"1. The screening provided for under this Regulation shall apply to all third-country nationals, regardless of whether they have made an application for international protection, who do not fulfil the entry conditions set out in Article 6 of Regulation (EU) 2016/399 and who:

(a) are apprehended in connection with an unauthorised crossing of the external border of a Member State by land, sea or air, except third-country nationals for whom the Member State concerned is not required to take the biometric data pursuant to Article 22(1) and (4) of Regulation (EU) 2024/1358 for reasons other than their age; or

(b) are disembarked in the territory of a Member State following a search and rescue operation.

2. The screening provided for under this Regulation shall apply to all third-country nationals who have made an application for international protection at external border crossing points or in transit zones and who do not fulfil the entry conditions set out in Article 6 of Regulation (EU) 2016/399.

..."

Article 6 – Authorisation to enter the territory of a Member State

"During the screening, the persons referred to in Article 5(1) and (2) shall not be authorised to enter the territory of a Member State. Member States shall lay down in their national law provisions to ensure that persons referred to in Article 5(1) and (2) remain available to the authorities responsible for carrying out the screening in the locations as referred to in Article 8, for the duration of the screening, to prevent any risk of absconding, potential threats to internal security resulting from such absconding or potential threats to public health resulting from such absconding."

Article 8 – Requirements concerning the screening

"1. In the cases referred to in Article 5, the screening shall be conducted at any adequate and appropriate location designated by each Member State, generally situated at or in proximity to the external borders or, alternatively, in other locations within its territory.

...

3. In the cases referred to in Article 5 of this Regulation, the screening shall be carried out without delay and in any case be completed within seven days from the apprehension in the external border area, the disembarkation in the territory of the Member State concerned or the presentation at the border crossing point. With regard to persons referred to in Article 5(1), point (a), of this Regulation to whom Article 23(1) and (4) of Regulation (EU) 2024/1358 applies, where those persons remain physically at the external border for more than 72 hours, the screening of them shall be carried out thereafter and the period for the screening shall be reduced to four days.

...

5. The screening shall comprise the following elements:

(a) a preliminary health check in accordance with Article 12;

(b) a preliminary vulnerability check in accordance with Article 12;

(c) identification or verification of identity in accordance with Article 14;

(d) the registration of biometric data in accordance with Articles 15, 22 and 24 of Regulation (EU) 2024/1358, to the extent that it has not yet occurred;

(e) a security check in accordance with Articles 15 and 16;

(f) the filling out of a screening form in accordance with Article 17;

(g) referral to the appropriate procedure in accordance with Article 18.

..."

E. Detention of applicants for international protection

1. Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) ("the Reception Conditions Directive")

181. The relevant provisions of the Reception Conditions Directive read as follows:

Article 8 – Detention

"1. Member States shall not hold a person in detention for the sole reason that he or she is an applicant in accordance with Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection.

2. When it proves necessary and on the basis of an individual assessment of each case, Member States may detain an applicant, if other less coercive alternative measures cannot be applied effectively.

3. An applicant may be detained only:

(a) in order to determine or verify his or her identity or nationality;

(b) in order to determine those elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding of the applicant;

(c) in order to decide, in the context of a procedure, on the applicant's right to enter the territory;

...

(e) when protection of national security or public order so requires;

...

4. Member States shall ensure that the rules concerning alternatives to detention, such as regular reporting to the authorities, the deposit of a financial guarantee, or an obligation to stay at an assigned place, are laid down in national law."

Article 9 – Guarantees for detained applicants

"1. An applicant shall be detained only for as short a period as possible and shall be kept in detention only for as long as the grounds set out in Article 8(3) are applicable.

...

2. Detention of applicants shall be ordered in writing by judicial or administrative authorities. The detention order shall state the reasons in fact and in law on which it is based.

3. Where detention is ordered by administrative authorities, Member States shall provide for a speedy judicial review of the lawfulness of detention to be conducted *ex officio* and/or at the request of the applicant ...

4. Detained applicants shall immediately be informed in writing, in a language which they understand or are reasonably supposed to understand, of the reasons for detention

and the procedures laid down in national law for challenging the detention order, as well as of the possibility to request free legal assistance and representation.

...

6. In cases of a judicial review of the detention order provided for in paragraph 3, Member States shall ensure that applicants have access to free legal assistance and representation. This shall include, at least, the preparation of the required procedural documents and participation in the hearing before the judicial authorities on behalf of the applicant.

Free legal assistance and representation shall be provided by suitably qualified persons as admitted or permitted under national law whose interests do not conflict or could not potentially conflict with those of the applicant.

..."

2. *Directive (EU) 2024/1346 of the European Parliament and of the Council of 14 May 2024 laying down standards for the reception of applicants for international protection*

182. The relevant provisions of this Directive, which repealed Directive 2013/33/EU with effect from 12 June 2026, read as follows:

Article 10 – Detention

"1. Member States shall not hold a person in detention for the sole reason that that person is an applicant or on the basis of the nationality of that applicant. The detention shall be based only on one or more of the grounds for detention set out in paragraph 4. The detention shall not be punitive in nature.

2. Where necessary and on the basis of an individual assessment of each case, Member States may detain an applicant, if other less coercive alternative measures cannot be applied effectively.

...

4. An applicant may be detained only on the basis of one or more of the following grounds:

(a) to determine or verify his or her identity or nationality;

(b) to determine the elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular where there is a risk of absconding;

(c) to ensure compliance with legal obligations imposed on the applicant through an individual decision in accordance with Article 9(1) in cases where the applicant has not complied with such obligations and there continues to be a risk of absconding;

(d) to decide, in the context of a border procedure in accordance with Article 43 of Regulation (EU) 2024/1348, on the applicant's right to enter the territory;

...

(f) when protection of national security or public order so requires;

...

The grounds for detention referred to in the first subparagraph shall be laid down in national law.

..."

Article 11 – Guarantees for detained applicants

"1. An applicant shall be detained only for as short a period as possible and shall be kept in detention only for as long as the grounds set out in Article 10(4) are applicable.

...

2. The detention of applicants shall be ordered in writing by judicial or administrative authorities. The detention order shall state the reasons in fact and in law on which it is based as well as why less coercive alternative measures cannot be applied effectively.

3. Where detention is ordered by administrative authorities, Member States shall provide for a speedy judicial review of the lawfulness of detention to be conducted *ex officio* or upon the request of the applicant, or both ...

4. Detained applicants shall immediately be informed in writing, in a language which they understand or are reasonably supposed to understand, of the reasons for detention and the procedures laid down in national law for challenging the detention order, as well as of the possibility to request free legal assistance and representation.

...

6. In the event of judicial review of the detention order provided for in paragraphs 3 and 5 of this Article, Member States shall ensure that applicants have access to free legal assistance and representation under the conditions set out in Article 29."

F. Addressing situations of crisis and *force majeure*

183. Regulation (EU) 2024/1359 of the European Parliament and of the Council of 14 May 2024 addressing situations of crisis and *force majeure* in the field of migration and asylum and amending Regulation (EU) 2021/1147 became applicable on 12 June 2026. It provides, in relevant part:

Article 1 – Subject matter

"1. This Regulation addresses exceptional situations of crisis, including instrumentalisation, and *force majeure*, in the field of migration and asylum within the Union by means of temporary measures. It provides for enhanced solidarity and support measures that build upon Regulation (EU) 2024/1351 while ensuring the fair sharing of responsibility, and for temporary specific rules derogating from those set out in Regulations (EU) 2024/1351 and (EU) 2024/1348.

2. Temporary measures adopted pursuant to this Regulation shall meet the requirements of necessity and proportionality, be appropriate to achieving their stated objectives and ensuring the protection of the rights of applicants and beneficiaries of international protection, and be consistent with the obligations of the Member States under the Charter, international law and the Union asylum acquis. This Regulation shall not affect the fundamental principles and guarantees, established by the legislative acts from which derogations are allowed pursuant to this Regulation.

3. The measures adopted pursuant to this Regulation shall be applied only to the extent strictly required by the exigencies of the situation, in a temporary and limited

manner and only in exceptional circumstances. Member States may apply the measures provided for in Chapter IV and benefit from the measures provided for in Chapter III only upon request and to the extent provided for in the Council implementing decision referred to in Article 4(3) without prejudice to Article 10(5).

4. For the purposes of this Regulation, a situation of crisis means:

(a) an exceptional situation of mass arrivals of third-country nationals or stateless persons in a Member State by land, air or sea, including of persons that have been disembarked following search and rescue operations, of such a scale and nature, taking into account, *inter alia*, the population, GDP and geographical specificities of the Member State, including the size of the territory, that it renders the Member State's well-prepared asylum, reception, including child protection services, or return system non-functional, including as a result of a situation at local or regional level, such that there could be serious consequences for the functioning of the Common European Asylum System; or

(b) a situation of instrumentalisation where a third country or a hostile non-state actor encourages or facilitates the movement of third-country nationals or stateless persons to the external borders or to a Member State, with the aim of destabilising the Union or a Member State, and where such actions are liable to put at risk essential functions of a Member State, including the maintenance of law and order or the safeguard of its national security.

Member States may request the authorisation to apply measures listed in Chapter III and IV in particular where there is an unexpected significant increase in the caseload of applications for international protection at the external borders. Member States may apply the derogations provided for in the Council implementing decision referred to in Article 4(3) in the situation of instrumentalisation only in respect of third-country nationals or stateless persons who are subject to instrumentalisation and who are either apprehended or found in the proximity of the external border, meaning the Member State's land borders, including river and lake borders, sea borders and its airports, river ports, sea ports and lake ports, provided that they are not internal borders, in connection with an unauthorised crossing by land, sea or air, or who are disembarked following search and rescue operations or who have presented themselves at border crossing points.

5. For the purposes of this Regulation, *force majeure* refers to abnormal and unforeseeable circumstances outside a Member State's control, the consequences of which could not have been avoided notwithstanding the exercise of all due care, which prevent that Member State from complying with obligations under Regulations (EU) 2024/1351 and (EU) 2024/1348."

Article 10 – Registration of applications for international protection in situations of crisis or *force majeure*

"1. In a situation of crisis or *force majeure*, by way of derogation from Article 27 of Regulation (EU) 2024/1348, the Member State facing that situation may register applications made within the period during which this paragraph is applied, no later than four weeks after those applications are made.

2. When applying paragraph 1, the Member State concerned shall prioritise the registration of applications of persons with special reception needs as defined in Directive (EU) 2024/1346 and of minors and their family members.

3. When applying paragraph 1, Member States may prioritise the registration of applications which are likely to be well-founded.

...

5. In accordance with Article 3 of Directive (EU) 2024/1346 and Regulation (EU) 2024/1348, Member States shall ensure that applicants are able to access and exercise their rights under those instruments in an effective manner as soon as they make an application, regardless of when the registration takes place. The Member State concerned shall duly inform the third-country nationals or stateless persons in a language which they understand, or are reasonably supposed to understand, about the measure applied, the location of the registration points, including the border crossing points accessible for registering and lodging an application for international protection, and the duration of the measure.

..."

Article 11 – Measures applicable to the asylum border procedure in a situation of crisis or *force majeure*

"1. In a situation of crisis or *force majeure*, Member States may, as regards applications made within the period during which this Article is applied, derogate from Article 51(2) of Regulation (EU) 2024/1348, by extending the maximum duration of the border procedure for the examination of applications set out in that Article by an additional period of maximum six weeks. That period shall not be used in addition to the period referred to in Article 51(2), third subparagraph, of that Regulation.

...

10. For the purpose of applying the derogations referred to in this Article, the basic principles of the right to asylum and the respect of the principle of non-refoulement, as well as the guarantees provided for in Chapters I and II of Regulation (EU) 2024/1348 shall apply to ensure that the rights of those who seek international protection, including the right to an effective remedy, are protected.

Organisations and persons permitted under national law to provide advice and counselling shall have effective access to applicants held in detention facilities or present at border crossing points. Member States may impose limits to such actions where, by virtue of national law, they are objectively necessary for the security, public order or administrative management of a detention facility, provided that access is not thereby severely restricted or rendered impossible.

..."

Article 15 – Specific provisions and guarantees

"In a situation of crisis, where a Member State applies a derogation as referred to in Articles 10 to 13, it shall duly inform third-country nationals or stateless persons in a language which they understand or are reasonably supposed to understand about the measures applied, the location of the registration points, including the border crossing points, which are accessible for registering and lodging an application for international protection, and the duration of the measures."

G. Case-law of the Court of Justice of the European Union (CJEU)

1. Valstybės sienos apsaugos tarnyba and Others *(C-72/22 PPU)*

184. On 30 June 2022, in the case of *Valstybės sienos apsaugos tarnyba and Others* (C-72/22 PPU, EU:C:2022:505), the CJEU issued a preliminary

ruling at the request of the Supreme Administrative Court of Lithuania (see paragraph 169 above). The case concerned, *inter alia*, temporary accommodation without the right to freedom of movement of an individual who had illegally entered Lithuania from Belarus. At the outset, the CJEU had to determine whether that measure, which under the Lithuanian law was considered distinct from detention, had in fact amounted to detention within the meaning of EU law. It held as follows:

> "39. ... [A]s regards the concept of 'detention', for the purposes of Article 2(h) of Directive 2013/33, the [CJEU] has already held that it is apparent from the wording and history of that provision, and from the context in which it occurs, that the detention of an applicant for international protection constitutes a coercive measure that deprives the applicant of his or her freedom of movement and isolates him or her from the rest of the population, by requiring him or her to remain permanently within a restricted and closed perimeter (see, to that effect, judgment of 14 May 2020, *Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság*, C-924/19 PPU and C-925/19 PPU, EU:C:2020:367, paragraph 223).
>
> 40. In the present case, ... M.A. was the subject of a measure 'other' than detention, within the meaning of Lithuanian law, inasmuch as he was being accommodated in one of [SBGS] centres with his movements being restricted to the perimeter of that place of accommodation.
>
> 41. ... [A]lthough M.A. could move about within the [SBGS] centre in question, he could not go beyond the centre's perimeter without authorisation or unaccompanied. Consequently, it appears that he was isolated from the rest of the population and deprived of his freedom of movement.
>
> 42. That being so, he must be regarded as being in detention, within the meaning of Article 2(h) of Directive 2013/33."

185. The first question referred to the CJEU for a preliminary ruling was whether the relevant EU law precluded rules of national law which, in the event of the declaration of a state of war, a state of emergency or an extraordinary situation due to a mass influx of aliens, did not allow an alien who had entered the territory of a member State and remained there unlawfully to lodge an application for international protection. The CJEU held:

> "57. It is clear from Article 6(1), (3) and (4) of Directive 2013/32 that the act of 'making' an application for international protection entails no administrative formalities, such formalities having to be observed when the application is 'lodged' ...
>
> 58. As regards specifically the act of 'making' an application for international protection, it should be clearly stated that Article 7(1) of Directive 2013/32 provides that any adult with legal capacity has the right to make an application for international protection on his or her own behalf. Moreover, it is clear from the Court's case-law that any third-country national or stateless person has the right to make an application for international protection on the territory of a Member State, including at its borders or in its transit zones, even if he or she is staying illegally in that Member State ...
>
> 59. Moreover, Article 6(2) of Directive 2013/32 lays down the obligation for Member States to ensure that any person who has made an application for international protection has an effective opportunity to lodge it as soon as possible (see, to that effect,

judgment of 25 June 2020, *Ministerio Fiscal (Authority likely to receive an application for international protection)*, C-36/20 PPU, EU:C:2020:495, paragraph 63).

...

63. It must therefore be held that the application of national legislation, such as [Article 140^{12} § 1 of the Aliens Act], which provides that third-country nationals who are staying illegally are, for that reason alone, deprived, after entering Lithuania, of the opportunity of making or lodging an application for international protection, thereby prevents such nationals from effectively enjoying the right enshrined in Article 18 of the Charter.

...

65. Admittedly, under Article 6(3) of Directive 2013/32, the Member States may require that applications for international protection be lodged in person and/or at a designated place. Nevertheless, ... the Member States cannot exercise that option in such a manner as would, in practice, prevent third-country nationals, or some of them, from lodging an application or from lodging one 'as soon as possible'. Any contrary interpretation would run counter to the objective of Directive 2013/32 of ensuring effective, easy and rapid access to the procedure for granting international protection, and would seriously undermine the practical effectiveness of the right to seek asylum, which, under Article 7 of the directive, every third-country national enjoys.

66. The same applies where a third-country national's access to the procedure referred to in Article 6 of Directive 2013/32 can nevertheless be ensured by means of the exercise of a discretionary power ...

67. ... [A] provision of national law, such as [Article 140^{12} § 2 of the Aliens Act], which allows the competent authority a discretion to consider the applications of only some illegally staying individuals, in light of their particular vulnerability, does not satisfy the requirements laid down in Article 7(1) of Directive 2013/32.

68. Notwithstanding, the Lithuanian Government puts forward, as justification for the restrictions upon the right to submit an application for international protection resulting from [Article 140^{12} § 1 of the Aliens Act], the threat to public order or internal security which the Republic of Lithuania is facing on account of the mass influx of migrants at its borders, arriving mainly from Belarus.

69. In light of that, it is important to note that, pursuant to Article 72 TFEU, the provisions of Title V of Part Three of that Treaty do not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.

...

71. In addition, the derogation provided for in Article 72 TFEU must be interpreted strictly. It follows that Article 72 TFEU cannot be read in such a way as to confer on Member States a power to depart from the provisions of EU law based on no more than reliance on the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security (see, to that effect, judgment of 17 December 2020, *Commission v Hungary (Reception of applicants for international protection)*, C-808/18, EU:C:2020:1029, paragraph 215).

72. ... [T]he placing of reliance, generally, on threats to public order or internal security caused by the mass influx of third-country nationals provides no justification, by reference to Article 72 TFEU, for a provision, such as [Article 140^{12} of the Aliens Act], which causes third-country nationals staying illegally on the territory of a Member

State to be deprived *de facto* of the right to submit an application for international protection on the territory of that Member State.

...

75. Having regard to all the foregoing considerations, the answer to the first question referred for a preliminary ruling must be that Article 6 and Article 7(1) of Directive 2013/32 are to be interpreted as precluding legislation of a Member State under which, in the event of a declaration of martial law or of a state of emergency or in the event of a declaration of an emergency due to a mass influx of aliens, illegally staying third-country nationals are effectively deprived of the opportunity of access, in the territory of that Member State, to the procedure in which applications for international protection are examined."

186. The second question before the CJEU was whether the relevant EU law precluded rules of national law under which, in the event of the declaration of a state of war, a state of emergency or an extraordinary situation due to a mass influx of aliens, an asylum applicant could be detained merely because he or she had entered the territory of the State by crossing its border illegally. The CJEU held:

"84. ... [I]t must be pointed out that the circumstance that an applicant for international protection is staying illegally on the territory of a Member State is not among the grounds which, under Article 8(3) of Directive 2013/33, are capable of justifying the detention of such an applicant. Consequently, a third-country national may not be made the subject of a detention measure for that reason alone.

85. Nevertheless, it would appear necessary, in order to provide the referring court with a useful answer, to determine whether such a circumstance can justify the detention of an asylum seeker on the ground of the protection of national security or public order referred to in point (e) of Article 8(3) of Directive 2013/33, as the Lithuanian Government essentially considers. In particular, according to that government, in the exceptional context of the mass influx of aliens arriving from Belarus, the conduct of an individual in M.A.'s position constitutes a threat to public order and national security in the Republic of Lithuania. At the hearing, the government of that Member State also advanced the threat which a foreign national in M.A.'s position represents for public order and public security in other Member States of the European Union.

...

89. It follows ... that placing or keeping an applicant in detention under point (e) of the first subparagraph of Article 8(3) of Directive 2013/33 is, in view of the requirement of necessity, justified on the ground of a threat to national security or public order only if the applicant's individual conduct represents a genuine, present and sufficiently serious threat affecting a fundamental interest of society or the internal or external security of the Member State concerned (judgment of 15 February 2016, *N.*, C-601/15 PPU, EU:C:2016:84, paragraph 67).

90. That being so, the illegal nature of the presence of an applicant for international protection cannot, in itself, be regarded as demonstrating the existence of a sufficiently serious threat affecting a fundamental interest of society or as revealing a threat to another of the interests mentioned in paragraph 89 of this judgment Accordingly, it cannot be accepted that such an applicant can, for the sole reason that he or she is staying illegally in a Member State, constitute a threat to national security or public order in that Member State, within the meaning of Article 8(3)(e) of Directive 2013/33.

...

93. Taking all of those considerations into account, the answer to the second question referred for a preliminary ruling is that Article 8(2) and (3) of Directive 2013/33 must be interpreted as precluding legislation of a Member State under which, in the event of a declaration of martial law or of a state of emergency or in the event of a declaration of an emergency due to a mass influx of aliens, an asylum seeker may be placed in detention for the sole reason that he or she is staying illegally on the territory of that Member State."

2. Staatssecretaris van Justitie en Veiligheid (Mutual trust in the event of transfer) *(C-392/22)*

187. In its preliminary ruling of 29 February 2024 in *Staatssecretaris van Justitie en Veiligheid (Mutual trust in the event of transfer)* (C-392/22, EU:C:2024:195), the CJEU had to determine the question whether, and if so under what circumstances, a practice by a member State (in the case at hand, Poland) of "pushbacks" of third-country nationals seeking to make applications for international protection at its border and of detaining them at its border control posts precluded the transfer of an asylum-seeker under the Dublin III Regulation from another member State to that member State. The CJEU held:

"50. As regards, in the first place, the practice of pushbacks to the external borders of the European Union, which effectively removes persons seeking to make an application for international protection from the territory of the European Union or removes them from that territory before an application made on entry has been examined as provided for by EU legislation, it must be noted that this practice is contrary to Article 6 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60).

51. That provision, which concerns access to the procedure for the grant of international protection, constitutes one of the cornerstones of the Common European Asylum System and is part of EU legislation giving concrete form to the fundamental right enshrined in Article 18 of the Charter to qualify as a beneficiary of international protection, provided that the conditions required by EU law are met (see, to that effect, judgment of 14 May 2020, *Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság*, C-924/19 PPU and C-925/19 PPU, EU:C:2020:367, paragraph 192). That provision means that any third-country national or stateless person has the right to make an application for international protection, including at the borders of a Member State, by expressing his or her wish to benefit from international protection to one of the authorities referred to in that provision. That right must be recognised, even if he or she is staying illegally on that territory and irrespective of the prospects of success of such a claim (judgment of 22 June 2023, *Commission v Hungary (Declaration of intent prior to an asylum application)*, C-823/21, EU:C:2023:504, paragraph 43 and the case-law cited).

52. As the Advocate General noted, in essence, in points 31 and 32 of his Opinion, a practice of pushbacks is incompatible with that fundamental element of the Common European Asylum System, in that it prevents the right to make an application for international protection from being exercised, and, accordingly, prevents the progress,

in accordance with the rules laid down by EU legislation, of the process of making and examining such an application.

53. While it is, in all events, contrary to Article 6 of Directive 2013/32, a practice of pushbacks may also be incompatible with the principle of non-refoulement. As is apparent from recital 3 of the Dublin III Regulation, that principle, under which nobody can be sent back to persecution, is guaranteed, as a fundamental right, in Article 18 of the Charter, read in conjunction with Article 33 of the Geneva Convention, and in Article 19(2) of the Charter (see, to that effect, judgment of 22 November 2022, *Staatssecretaris van Justitie en Veiligheid (Removal – Medicinal cannabis)*, C-69/21, EU:C:2022:913, paragraph 55). A practice of pushbacks is therefore incompatible with that principle only if it consists in sending persons seeking to make, in the European Union, an application for international protection to a third country on whose territory they incur the risk of persecution referred to above.

...

57. It follows from the foregoing considerations that practices, such as those established in the present case, of pushback and of detention at border control posts are incompatible with EU law and constitute serious flaws in the asylum procedure and in the reception conditions for applicants. However, it does not necessarily follow that those flaws satisfy the two cumulative conditions, set out in the second subparagraph of Article 3(2) of the Dublin III Regulation, that must be satisfied in order to prevent the transfer of an applicant for international protection to the Member State in which those practices exist."

IV. COMPARATIVE LAW

188. A comparative-law report prepared by the Court's Research Division for the purpose of the present proceedings examined the national legal frameworks governing officially declared states of emergency or other extraordinary situations with regard to the entry of aliens for the purpose of requesting international protection.

189. The report concerned the following 37 Council of Europe member States: Armenia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, the Republic of Moldova, Montenegro, the Netherlands, North Macedonia, Norway, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Türkiye, Ukraine and the United Kingdom.

190. Among the member States surveyed, 14 specifically regulate the entry of aliens to national territory for the purpose of requesting international protection in extraordinary situations (Armenia, Austria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, Greece, Hungary, the Republic of Moldova, Norway, Slovenia, Spain and Türkiye), whereas the remaining 23 States do not have special legislative provisions in that regard.

191. The laws of Estonia, Finland, Greece, Hungary and Norway provide for a possibility, during officially declared extraordinary situations, not to accept asylum applications lodged in unauthorised locations and to remove such aliens without examining their applications. In Estonia, even in crisis

situations, the authorities are prohibited from expelling aliens to a country where they would risk treatment contrary to Article 3 of the Convention. In Norway, those provisions concern only aliens who have arrived directly from another Nordic State.

192. In Finland, the Act on Temporary Measures to Combat Instrumentalised Migration entered into force on 22 July 2024, for a period of one year. It was subsequently extended for a further year. Its objective is to combat efforts by a foreign State to exert influence on Finland by exploiting migrants. The Act lays down the conditions under which the government may restrict the reception of applications for international protection in a limited area on Finland's national border and in its immediate vicinity. In such cases, applications for international protection would not, save for certain exceptions, be received in the area subject to the restriction, and "instrumentalised" migrants would be prevented from entering the country. A migrant who has already entered the country would be removed without delay and instructed to travel to a place where applications for international protection are being received. A person to be removed may submit a written request for reconsideration but such a request does not suspend the removal. The application of the Act has to be triggered by a separate decision of the government, based on the determination that there are circumstances which satisfy the conditions for such a decision; the government's decision has to specify the duration of its application and the affected area.

193. In Greece, the general constitutional provisions granting the President the power to adopt "acts of legislative content" were used in March 2020, when Greece faced a high number of migrants trying to cross the border from Türkiye. An act of legislative content was adopted, providing that the registration of international protection requests from people having crossed the border illegally would be suspended for one month and that the persons concerned had to be returned, without being registered, to their country of origin or provenance. The preparatory work on the law suggested that these measures were justified by the fact that Türkiye had tried to push a high number of migrants into Greece and to help them cross the border illegally.

V. RELEVANT REPORTS AND OTHER MATERIAL

A. International material

1. UN bodies

(a) Special Rapporteur on the human rights of migrants

194. During the fifty-third session of the UN Human Rights Council, held from 19 June to 14 July 2023, the Special Rapporteur on the human rights of migrants presented a report containing the findings from his visit to Belarus,

which had taken place from 16 to 20 July 2022 (A/HRC/53/26/Add.2). The relevant parts read (references omitted):

> "18. In the summer of 2021, there was a significant increase in the number of visitors with Belarusian tourist visas arriving in Minsk from countries of the Middle East – mainly families with children. Most were from Iraq and the Syrian Arab Republic, and many came in groups, benefiting from 'group visas' issued by Belarus ...
>
> ...
>
> 21. The sudden increase in the number of foreigners arriving in Belarus from the Middle East on tourist visas was unprecedented. Belarus repeatedly claimed that it was a surprise to the authorities, blaming travel agencies for having violated visa policies. However, the authorities did not provide any convincing arguments or evidence disproving that the situation of migrants at the border was to a significant extent the result of a series of deliberate actions of the Government of Belarus, especially considering that the President had warned that Belarus would allow migrants to enter the European Union if sanctions were imposed on Belarus, after the incident with a Ryanair flight in Belarus in May 2021. The Special Rapporteur learned from the authorities that in 2021, within a short period of time, the procedures for Iraqi citizens to obtain a tourist visa for Belarus were simplified significantly and that, with the assistance of travel agencies, group visas for a minimum of five and in some cases for 20 or 30 persons were issued on a regular basis. In addition, the Special Rapporteur learned that Belarusian border guards were fully aware of the group of about 2,500 migrants approaching the border with Poland on roads very close to a main border post of the Border Guard. They circulated through a series of fences on the Belarusian side, and although it is prohibited to enter the 200-metre zone adjoining the border, the group of 2,500 migrants did so without any impediment from the border guards, as they were not considered as a threat to the security of Belarus.
>
> 22. Unable to access the territory of Poland, most of the migrants in this large group set up a makeshift camp in a wooded area near the Bruzgi-Kuźnica crossing point on the Belarusian side of the border. ... They slept in tents and sleeping bags, in temperatures that had dropped below freezing point. ...
>
> ...
>
> 30. The Special Rapporteur is particularly concerned about allegations of use of violence by the border guards of both Belarus and Poland pushing migrants back and forth. Allegations include the use of water cannons, the destruction of migrants' phones and other electrical devices, using dogs to attack, pushing, threatening with weapons, and intimidation. Although denied by both States, the Special Rapporteur gathered testimonies and evidence inside and outside the countries, and witnessed the results of such violence being perpetrated against migrants, which included physical injuries, and mental health consequences such as stress and trauma ...
>
> ...
>
> 33. Several migrants have lost their lives at the borders, on both sides, since 2021. At the time of the visit, the Belarusian authorities had documented four such cases and had collected data, and the Polish authorities had investigated 10 deaths. In the meantime, the total number of deaths as recognized by the authorities of both countries does not correspond to information gathered by the delegation. According to public sources, at least 19 migrants died in the forest in 2021 and at least another 13 died in 2022, and as many as 195 persons went missing. Given the difficulty for civil society actors and the

media to monitor and document the situation, due to restrictions on accessing the border area, the Special Rapporteur is concerned that these figures could be higher."

(b) UNHCR

195. On 27 September 2021 the UNHCR Representation for the Nordic and Baltic Countries presented its observations on the draft amendment to the Aliens Act, which entered into force in January 2022 (see paragraph 139 above). The relevant part of those observations read as follows (references omitted):

"...

21. Pursuant to proposed Article 140^8 (4) and (6), persons who have applied for asylum at border crossing points or in transit zones shall not enjoy freedom of movement within the territory of Lithuania. They are required to stay at temporary accommodation places until a decision on their return or expulsion has been executed or until another decision on their legal status has been taken. If no decision is taken, they are required to stay in the temporary accommodation place for the entire duration of the emergency period and for 28 days thereafter ...

22. These measures amount [to] detention. UNHCR notes that there is no requirement to issue formal detention orders, and the authorities are not required to undertake assessments based on individual circumstances. Thus, the necessity, proportionality and adequacy of the use of detention are not going to be considered for a particular individual or family. No exemptions are foreseen for vulnerable persons, including children.

23. In addition, the proposed provision does not specify the maximum time limit and does not contain any reference to the possibility for administrative or judicial review of the detention measure during this period ...

24. In UNHCR's view, detention of asylum-seekers should not be used by default or mandatorily for all arrivals, but rather remain a measure of last resort. Minimal periods in detention are permissible at the outset to carry out initial identity and security checks in cases where identity is undetermined or disputed, or there are indications of security risks ...

25. As stressed in UNHCR's previous legal observations, if detention is applied for a legitimate purpose, it needs to be based on an individual decision, be strictly necessary and proportional, timebound and regularly reviewed ..."

2. Council of Europe

(a) Parliamentary Assembly of the Council of Europe (PACE)

196. In Resolution 2371 (2021) "Urgent need for electoral reform in Belarus", adopted on 21 April 2021, PACE concluded that the presidential election of 9 August 2020 in Belarus had been neither free nor fair. It condemned in the strongest terms the unprecedented wave of violence, mass arrests, intimidation and prosecution of political opponents, human rights defenders, journalists, media workers, independent election observers and citizens of Belarus following that election.

197. In Resolution 2372 (2021) "Human Rights violations in Belarus require an international investigation", adopted on 21 April 2021, PACE called upon the member States of the Council of Europe to, *inter alia*, support the ongoing efforts at international level to call to account the perpetrators of serious human rights violations committed in Belarus by State officials, to continue to take in the victims of repression who had been forced into political exile and to support Belarusian civil society.

198. Resolution 2404 (2021) "Instrumentalised migration pressure on the borders of Latvia, Lithuania and Poland with Belarus", adopted on 30 September 2021, reads, in the relevant part:

> "1. The Parliamentary Assembly is concerned by the unfolding situation of 'hybrid attacks' by the Belarusian authorities resulting in increased pressures relating to migration and asylum at the Belarus border with Latvia, Lithuania and Poland. This is all the more worrying as it has been orchestrated by the Belarusian authorities in response to European Union sanctions against Belarus, which were imposed for harsh violations of human rights. The Assembly condemns any instrumentalisation of migrants, refugees and asylum seekers by States for political purposes.
>
> 2. The Assembly notes with concern that recent arrivals of migrants and asylum seekers have created significant challenges for Latvia, Lithuania and Poland, putting a strain on their capacity to receive migrants and refugees.
>
> 3. The Assembly, however, reiterates the obligations of all Council of Europe member States to uphold human rights and humanitarian principles as well as international law relating to refugees and the right to seek asylum. Member States should furthermore ensure the necessary humanitarian assistance to people in need of protection, paying special attention to the situation of vulnerable groups, including families with young children, unaccompanied and separated children and people with disabilities and special needs. In doing so they should also consider protection needs from the perspective of gender.
>
> 4. The Assembly considers that effective border management by Council of Europe member States should be accompanied by adequate responses to the rights of asylum seekers. Border management should be fully compliant with European and international law and in particular the European Convention on Human Rights (ETS No. 5) and the 1951 United Nations Convention Relating to the Status of Refugees.
>
> 5. The Assembly condemns the growing tendency to restrict the right to seek asylum of persons crossing a border irregularly and any practice by member States of *refoulements* of migrants and asylum seekers to third countries, where international protection needs may not be guaranteed. It recalls the obligation of member States to respect the principle of *non-refoulement* and the prohibition of collective expulsion of foreigners.
>
> ...
>
> 10. The Assembly calls on the authorities in Belarus to:
>
> 10.1 stop the instrumentalisation of migrants, refugees and asylum seekers, in particular those in a vulnerable situation, and stop facilitating travel to Belarus by third-country nationals under the false pretence of tourism;
>
> 10.2 take full responsibility, under applicable international law, for third-country nationals present in the territory of Belarus, especially those in vulnerable situations,

and refrain from illegal actions such as taking away their travel documents or forcibly pushing them towards the border;

10.3 co-operate with its neighbours, Latvia, Lithuania and Poland, as well as with the European Union, on cross-border arrangements in order to solve ongoing problems in terms of irregular migratory flows across these borders.

11. The Assembly also calls on the authorities in Latvia, Lithuania and Poland to:

11.1 provide access to asylum procedures to all those seeking international protection;

11.2 refrain from *refoulements* to Belarus and provide the necessary safeguards to ensure the human rights of those seeking entry to their territory;

11.3 ensure that detention of asylum seekers is only used as a last resort and that alternatives to detention are explored. When detention is resorted to, it should be carried out with all relevant safeguards, including an assessment of the circumstances of the individuals and their families ...

..."

(b) Committee of Ministers

199. In Declaration CM(2026)99-final, adopted on 15 May 2026 during its 135th session, the Committee of Ministers stated that instrumentalisation of migration may be taken to refer to situations where migratory movements, including unlawful border crossings, are deliberately facilitated, encouraged or exploited by a hostile State or other actor, in some cases involving the use of force, with the aim of exerting pressure on, destabilising or undermining another State and European democracies (paragraph 37).

(c) Group of Experts on Action against Trafficking in Human Beings (GRETA)

200. GRETA carried out an evaluation visit to Belarus from 28 September to 1 October 2021. Its report, published on 27 October 2022, stated as follows (references omitted):

"100. ... [T]hroughout the summer and autumn of 2021, tens of thousands of migrants, mainly from the Middle East (Iraq and Syria), but also from other Asian and some African countries, flew to Minsk and subsequently tried to cross the Belarusian border into Latvia, Lithuania and Poland. There are reports that State-controlled travel agencies in Belarus lured migrants to Belarus, promising them an onward passage to the EU for the price of 15 000 – 20 000 euros. This large-scale movement of migrants took place after the EU announced additional sanctions against Belarusian officials and assets in late May 2021 (on top of sanctions imposed in October 2020 following the disputed presidential elections and the crackdown on peaceful protests). The Belarusian authorities repeatedly stated that they would no longer prevent foreigners from crossing Belarus' land borders with EU countries Latvia, Lithuania and Poland. Poland alone reported almost 40 000 attempts to cross its border from Belarus in 2021, compared to just 122 in 2020. In Germany, police reported that more than 11 000 migrants arrived in Germany in 2021 after transiting through Poland from Belarus, with more than 95% of those cases occurring between August and November 2021.

...

102. In late November 2021, a UN Human Rights Team was refused entry to Belarus but managed to interview more than 30 migrants in Poland who had managed to cross the border. Subsequently a spokesperson for the UN High Commissioner for Human Rights stated that '[t]he majority [of interviewees] said that, while in Belarus, they had been beaten or threatened by security forces, and also alleged that the Belarusian security forces forced them to cross the border, instructing them when and where to cross, and prevented people from leaving the border area to return to Minsk. Several interviewees said Belarusian security forces had demanded extortionate sums for food and water.' Journalists and human rights NGOs documented how Belarusian state officials and affiliated companies facilitated the transfer of thousands of migrants to Belarus with a promise of easy access into the EU. Belarusian officials actively assisted migrants to reach the EU borders, including armed officers in uniform driving migrants to the border, giving them tools to destroy the border fence and giving directions to avoid border patrols on the opposite side. Migrants testified being threatened, stripped of their passports and sim cards, and pushed across the border to Poland by Belarusian border guards. Between September and November 2021, at least a dozen migrants died, mostly from hypothermia as temperatures gradually dropped in the region, and one migrant allegedly drowned after he was forced to swim across the Bug river towards Poland.

...

104. GRETA has repeatedly highlighted the heightened vulnerability to [trafficking in human beings] of migrants and asylum seekers. In view of the numerous, consistent and detailed reports mentioned above, GRETA is deeply concerned that the Belarusian authorities have not only taken grossly insufficient measures to detect victims of human trafficking in the context of border controls, but may have themselves contributed to human trafficking."

(d) CPT

201. The CPT carried out a periodic visit to Lithuania from 10 to 20 December 2021. In its report, published on 23 February 2023, it stated (references omitted):

"The delegation carried out visits to the three foreigner registration centres (FRC), namely Pabradė FRC, Medininkai FRC and Kybartai FRC. Altogether, these centres accommodated 2 296 persons at the time of the visit. These centres were closed, fenced and under the continuous surveillance of security forces ...

...

Most foreign nationals were held under amended Article 5 of the [Aliens Act] ... Under this administrative measure, foreign nationals shall be 'accommodated ... without being granted the right to move freely within the territory of the Republic of Lithuania'. In practice, the restriction of movement was such that persons were not authorised to exit, even temporarily, the registration centres.

...

In practice, it appeared that regardless of their legal status, and albeit with a few exceptions, the persons accommodated in the three centres visited were all confined to the said centres. This situation applied equally to vulnerable persons, children and families. In the CPT's view, the restrictions imposed on 'accommodated' foreign nationals were such that they could amount to a form of deprivation of their liberty ...

Consequently, and for the purposes of this report, persons interviewed in the three Foreigners Registration Centres are referred to as 'detained foreign nationals', independently of their legal situation under Lithuanian law.

...

The premises [of Pabradė FRC] comprised the buildings of the FRC which were pre-existent to the crisis, and a large, camp-like extension of modular housing units (or 'container city') which had been set up as a response to the emergency ...

As part of the original FRC buildings, there was a healthcare facility, a classroom, a dining hall, a library and a computer room.

...

94. The FRC in Medininkai ... consisted of container-type, modular housing units and was divided into accommodation, administration and service areas ...

Accommodation was spread across five sectors. Sectors A and C were dedicated to families, sector B accommodated single men, and sector D accommodated single women. Sector E was empty at the time of the visit. 43 vulnerable persons were accommodated separately, in the only solid, brick dormitory of the centre. There was a unit for healthcare services, and a larger hall-like unit, mostly used for schooling purposes.

...

110. As a general rule, there was an open-door policy allowing persons to move within their assigned sector. Depending on the facility, this could be a section of a container camp (in Pabradė and Medininkai) ... Persons could not go to other sectors or meet persons from other sectors, except if special activities were planned. Access to shared areas (outside the sector), such as the dining hall or the library, or the healthcare centre, was usually subject to authorisation or based on a roster.

...

138. The main source of complaint expressed by the foreign nationals was a lack of understanding about the procedures and legal framework applicable to them, from the moment they were apprehended onwards ..."

B. EU material

1. Resolutions of the European Parliament

202. In its resolution of 17 September 2020 on the situation in Belarus (2020/2779(RSP)), the European Parliament rejected the results of the presidential elections that had taken place in Belarus on 9 August 2020, stated that it would not recognise A. Lukashenko as president of Belarus once his current term of office expired, and condemned, in the strongest possible terms, the Belarusian authorities for their violent repression of peaceful protests in the wake of the fraudulent 9 August 2020 presidential elections.

203. In its resolution of 10 June 2021 on the systematic repression in Belarus and its consequences for European security following the abductions from an EU civilian plane intercepted by Belarusian authorities (2021/2741(RSP)), the European Parliament strongly condemned the

hijacking and forced landing of Ryanair flight FR4978 in Minsk on 23 May 2021 and the detention by Belarusian authorities of journalist Raman Pratasevich and Sofia Sapega. It reiterated its non-recognition of the election of A. Lukashenko to the post of the President of Belarus. It further stated that it rejected the unacceptable threats of A. Lukashenko that the Belarusian authorities would not stop irregular migrants and drug trafficking, and expressed its concern regarding the increase in irregular migration from Belarus into the European Union and the potential involvement of Belarusian authorities in this phenomenon.

204. The resolution of 7 October 2021 on the situation in Belarus after one year of protests and their violent repression (2021/2881(RSP)) reads, in relevant part:

> "*The European Parliament*,
>
> ...
>
> J. whereas in retaliation against the EU sanctions imposed in response to the forced diversion of Ryanair flight FR4978, Lukashenka publicly threatened to flood the EU, notably neighbouring Lithuania and Poland, with migrants and drugs; whereas this threat was implemented by instrumentalising migrants for political purposes: whereas the Lukashenka regime devised a scheme to ferry migrants from Iraq, Turkey and other countries to Minsk, and with the help of Belarusian border guards, facilitated their illegal crossing into the European Union; whereas this lead to around 4 000 illegal migrants entering Lithuania, more than 1 400 entering Poland and around 400 entering Latvia; whereas Lithuania, Latvia and Poland declared a state of emergency at their borders with Belarus; whereas the number of irregular entries to the EU remains high and attempts to cross illegally continue; whereas the Belarusian regime uses force to push migrants into EU territory and creates propaganda and disinformation accusing EU Member States of facilitating illegal migration to Belarus; whereas Lukashenka has suggested ending Belarus' obligation to accept returning migrants and has submitted a draft law on its suspension to the Belarusian Parliament; whereas at least five migrants have died from hypothermia and exhaustion and several migrants have become stranded for weeks at the EU's external border with Belarus; ...
>
> ...
>
> U. whereas the Council adopted the fourth package of restrictive measures on Belarusian individuals and entities on 21 June 2021, following the forced and unlawful landing of Ryanair flight FR4978 in Minsk; whereas on 4 June 2021, the Council decided to introduce a ban on Belarusian carriers of all kinds entering EU airspace and accessing EU airports; whereas the European Union has so far imposed sanctions against 166 persons and 15 entities, including Aliaksandr Lukashenka, as well as targeted economic sanctions against several sectors of the Belarusian economy; ...
>
> ...
>
> 16. Strongly condemns the Lukashenka regime's instrumentalisation of human beings for political purposes, in breach of international norms and Belarus's bilateral treaties with its EU neighbours; underlines that Belarus's state-sponsoring of illegal crossings at the EU's external border, coupled with a disinformation campaign, is a form of hybrid warfare aimed at intimidating and destabilising the EU; expresses strong solidarity with Lithuania, Poland and Latvia, as well as other EU Member States targeted by the Belarusian regime; reiterates the need for the countries most affected to

effectively protect the EU's external borders, in compliance with relevant international law, in particular the Geneva Convention, as well as EU law on asylum, including the Charter of Fundamental Rights;

...

18. Calls on the Commission, the Council and the Member States to adopt a common approach to this situation based on relevant EU and international law and on the principles of solidarity, transparency, accountability and respect for human rights and fundamental freedoms; calls on the Commission to urgently table targeted legislative proposals providing Member States with the necessary safeguards to swiftly and effectively react and respond to migration instrumentalisation campaigns by non-EU countries, in particular by ensuring strong and effective protection of the EU's external borders and by providing effective measures to prevent irregular crossings as well as elaborating ways to stop the abuse of the asylum system by any hostile third country or criminal network;

19. Is concerned over the deaths of people at the border between Belarus and the EU and expresses its sympathy to the families and relatives of the deceased; calls on the authorities of Poland, Latvia, Lithuania and other affected Member States to ensure that EU asylum and return law and international human rights law are respected also during the emergency situation, including access to asylum and access of media, civil society organisations and legal aid providers to the border area to the largest extent possible, and to take into account the guidance by the UN Refugee Agency (UNHCR) and bodies of the Council of Europe; calls on the Commission as the guardian of the Treaties to ensure compliance with relevant EU law;

..."

2. European Commission

205. The Communication from the European Commission to the European Parliament and the Council on countering hybrid threats from the weaponisation of migration and strengthening security at the EU's external borders (COM/2024/570 final) of 11 December 2024 read (references omitted):

"1. Challenges at the EU's external land borders with Russia and Belarus and the threat to the Union's security

...

Since February 2022, with its military aggression against Ukraine, Russia has been grossly violating international law, including the United Nations Charter, undermining European and global security and stability. Russia's war of aggression against Ukraine is also an attack on the values of democracy, rule of law and fundamental rights. Russia is not alone in its actions. Belarus has often aided and provided decisive support to Russian activities. This is especially the case since the imposition of sanctions on Lukashenka's regime, following the fraudulent presidential elections in 2020. At the time, Belarus supported by Russia launched an operation to create an artificial migration route through its land borders with Member States, notably Latvia, Lithuania and Poland, to other European countries.

Not only have Russia's actions brought war back to the European continent, but they have also created a sense of insecurity and instability. This is reinforced by the intensification of provocations and the use of hybrid warfare tactics, such as the

weaponisation of migrants whereby Russia and Belarus artificially and illegally facilitate illegal migration flows towards the EU's external borders. Russia and Belarus take advantage of people, using human beings in an act of hostility, disregarding their vulnerability. Russia and Belarus use this hybrid warfare as a political tool with the objective of destabilising our societies and undermining the unity of the European Union. This jeopardises not only the national security and sovereignty of Member States but also the safety and integrity of the Schengen area and the security of the Union as a whole. The use of violence by individuals, in particular when acting in a group, against border guards in the context of some illegal entries into the Union further aggravates the situation and has a serious impact on EU society. Ultimately, the activities orchestrated by Russia and Belarus are also intended to weaken the support that the Union and its citizens provide to Ukraine in its legitimate self-defence efforts.

This year irregular arrivals at the EU-Belarusian borders have increased significantly (66% increase in 2024 compared to the same period in 2023), particularly at the Polish-Belarusian border. This is also due to the involvement of Belarusian authorities in facilitating crossings, i.e. authorising access to the border area and equipping migrants with ladders and other devices. Russian authorities are facilitating these movements, given that more than 90% of migrants illegally crossing the Polish-Belarusian border have a Russian student or tourist visa. Similar elements were observed in 2023 at the Finnish-Russian border, where the majority of migrants were in possession of a valid Russian visa and had already previously tried to enter the EU through Belarus. A recent agreement between Belarus and Russia on the mutual recognition of visas could further facilitate movements of third country nationals between Russia and Belarus, including those intending to illegally cross the border to the EU. Moreover, the situation at the other parts of the Union's borders with Russia and Belarus remains of concern with persistent threats related to weaponisation of migrants.

To guarantee the security of the Union and territorial integrity of the Member States, it is necessary that Member States bordering Russia and Belarus are able to act decisively and firmly to effectively control the Union's external borders. Member States have the responsibility to maintain law and order and safeguard internal security within their national territories. They also have a duty to take all the measures necessary to efficiently control and manage the external borders in order to ensure a high level of security within the Union as required under EU law.

The right to asylum, the respect for human dignity and the principle of non-refoulement are important cornerstones. International law and EU law allow Member States to tackle situations decisively, where this is needed to uphold security and public order, while respecting the rights of any persons affected by the measures. In view of the serious nature of the threat, as well as its persistence, to the security of the Union and territorial integrity of the Member States, Member States may invoke Treaty provisions to exceptionally and under stringent conditions go further than what is currently provided for by EU secondary legislation, under the control of the Court of Justice.

...

3. Legal context

Under the Schengen Borders Code, Member States are required to protect the EU's external border. They have an obligation to preserve the integrity of the Schengen area by preventing unauthorised border crossings, countering cross-border criminality and taking measures against persons who have crossed the border illegally. It is the Member

States that have, as a matter of principle, the right to control the entry, residence, and removal of aliens.

At the same time, while managing the EU's external borders, Member States must respect fundamental rights and the principle of non-refoulement. This principle is established in the 1951 Convention relating to the Status of Refugees and its 1967 Protocol ('the Geneva Convention'), the Charter of Fundamental Rights, as well as in the Schengen Borders Code. It is part of customary law that is binding on all States, and it is enshrined in a series of international agreements, such as the Convention against Torture and the International Covenant on Civil and Political Rights. The principle of non-refoulement protects persons for whom there are substantial grounds for believing that they would otherwise face a real risk of being subjected to torture or other inhuman or degrading treatment or punishment.

...

The Common European Asylum System (CEAS) is based on the full and inclusive application of the Geneva Convention. The Charter of Fundamental Rights enshrines the right to asylum building on the norms laid down by the Geneva Convention and the principle of non-refoulement, which builds on Article 4 of the 4th Additional Protocol to the European Convention on Human Rights ("ECHR"), Article 3 ECHR and Article 15 ECHR. Fundamental rights in the Charter have the same legal value as the Treaties and must be respected when applying EU law.

At this moment in time, and at the EU's external border with Russia and Belarus, it is clear that Member States are being subjected to a hybrid attack by hostile States that intend to destabilise a region via a war of aggression against Ukraine, whilst simultaneously weaponising migration to undermine the security of the Union. The Commission is committed to support Member States to prevent Russia and Belarus from attaining their objectives by using our principles and values against us. The persistent threat at these external borders and the effects that it has on the security of the Union and on the Member States in question, constitutes an exceptional and very serious situation. In fact, the security environment of the European Union has changed dramatically compared to the time when relevant international law instruments were enacted, and this may need to be taken into account in their application.

Guaranteeing national security is the responsibility of each Member State, as recognised by Article 4(2) TEU. This should be understood as comprising the integrity of essential State functions and the fundamental interests of society, the safeguarding of territorial integrity and the maintenance of law and order. Article 72 TFEU recognises that, in exceptional circumstances, Member States may need to take measures for reasons of law and order or public security derogating from EU secondary legislation as confirmed by the Court of Justice of the European Union. Any such derogations should be exceptional and applied only in clearly defined cases.

...

4. Cooperation with the Union and other Member States

...

Actions taken by Member States to preserve national security in accordance with the Treaties must comply with the limits and conditions of EU law. The case-law of the Court of Justice of the European Union provides useful guidance as regards the conditions and limits that must be taken into account.

Any measure must be proportionate and suitable to address the threat posed by Russia and Belarus, and it must be limited to what is strictly necessary. Member States must

explain the necessity and provide justifications when adopting any measures that have as an objective to protect national security, in accordance with the Treaties. Merely invoking the protection of interests, however fundamental, is not sufficient to satisfy the required reasoning. The need to argue the suitability and necessity of the measures also requires Member States to explain why flexibility provisions already available under the acquis are not suitable to address the particular circumstances.

Furthermore, measures which may result in limiting certain fundamental rights must be of a temporary nature. The fact that the measures would be limited in time is important when assessing whether the essence of the right at stake is respected, as exceptional measures must be targeted, adapted to the specific circumstances and be limited only for as long as necessary.

..."

C. Other material

1. Human Rights Watch

206. On 24 November 2021, in a publication entitled "Die Here or Go to Poland: Belarus' and Poland's shared responsibility for Border Abuses", Human Rights Watch reported as follows (references omitted):

"In overt retaliation for EU-imposed sanctions in May 2021, Belarusian authorities have facilitated the transit of migrants to the country's borders with the EU, specifically the member states of Lithuania, Latvia, and Poland. Belarus authorities facilitate tourist visas, primarily for people from the Middle East, through travel agents that make false claims that entry into the EU from Belarus is easy. Consequently, there has been a significant increase in flights from various airports, including Istanbul, Damascus, Baghdad, and Amman to the Minsk international airport since August.

In October, Human Rights Watch travelled to both sides of the Belarus-Poland border. We interviewed 12 migrants in Poland, and 7 migrants in Belarus, who gave detailed information on how the travel operation works. Local travel agents in the Middle East offer their services on social media, primarily Facebook, and offer package deals to Minsk. Belarusian state authorities issue visas through registered travel agents in Belarus, who are linked up with travel agents in the Middle East.

Visas, mandatory travel insurance, travel to the border, and hotels in Minsk are included in the price, and sometimes airfare as well. Depending on country of origin, and whether airfare is included or not, prices tend to range between US$3,000 to $17,000 per person, according to information provided by interviewees.

Migrants told Human Rights Watch how local travel agents in the Middle East, including in Syria, Iraq, Yemen, and Jordan, told them that they will be assisted all the way to Poland. Travel agents told them that news accounts of problems at the border are fake and that only people who do not buy package tours potentially face problems.

...

All 12 people interviewed in Poland told Human Rights Watch that tourist buses and agents awaited them on arrival at Minsk airport and brought them to hotels in Minsk, where they stayed between 1 and 7 days, awaiting travel to the border area. Human Rights Watch researchers witnessed how licensed taxis and vans pulled up to a hotel in central Minsk in the afternoon to take groups of people to the border areas."

2. Amnesty International

207. On 20 December 2021, in a publication entitled "Belarus/EU: New evidence of brutal violence from Belarusian forces against asylum-seekers and migrants facing pushbacks from the EU", Amnesty International reported as follows:

> "...
>
> Amnesty International's research revealed beatings and other serious torture or other ill-treatment, including people being deprived of food, water, shelter, and sanitation, as well as theft of phones and money or extortion for bribes by members of Belarusian forces.
>
> Those interviewed by the organization testified that they faced these abuses from Belarusian forces as they moved from Minsk to what is effectively an exclusion zone, typically fenced off, on Belarus' border with Poland, Latvia and Lithuania. People were escorted in groups to 'collection sites' within the fenced off zone ...
>
> ...
>
> Once in a 'collection site', people are not allowed to leave or go back towards unfenced areas accessible to civilians, and are trapped in inhumane conditions for days or weeks. People described being left without any food for days, or with minimal amounts of water or bread, and no shelter or sanitation. Several individuals told Amnesty International that they were only allowed to leave the 'collection sites' and the border strip zone after paying bribes.
>
> ..."

208. On 27 June 2022 Amnesty International published a report entitled "Lithuania: Forced out or locked up – Refugees and migrants abused and abandoned", based on, *inter alia*, field visits to Medininkai FRC and Kybartai FRC and interviews with forty-seven people who had been detained in Lithuania or removed from Lithuania to Belarus, which had been carried out between November 2021 and May 2022. The relevant parts of the report read (references omitted):

> "Refugees and migrants consistently reported that Lithuanian authorities used deception and violent methods to carry out pushbacks. Several people recounted beatings with batons by border guards, and at least three interviewees reported that Lithuanian border guards used tasers and stun guns on people at the border. Lithuanian guards often took money and the mobile phones of migrants and refugees before pushing them back to Belarus. People also reported being forced into freezing rivers while being pushed back to Belarus.
>
> Amnesty International spoke to 16 people who had been pushed back from Lithuania to Belarus, including 14 Iraqi nationals who, after being pushed back, eventually returned from Belarus to Iraq without ever having had the chance to lodge an asylum application. The group recounted instances that constitute torture or other cruel, inhuman degrading treatment or punishment ('other ill-treatment') at the hands of Lithuanian guards."

3. Médecins sans Frontières

209. In a publication entitled "People repeatedly repelled at Lithuania and Latvia borders face increased suffering", published on 15 December 2022, Médecins sans Frontières reported that dozens of people attempting to enter Lithuania and Latvia from Belarus had been pushed back and left to languish in the forest for up to several weeks and that at least twenty-seven people had died, although the real number could be higher.

THE LAW

I. PRELIMINARY ISSUES

A. The Government's objection of abuse of the right of individual application

1. The parties' submissions

210. The Government submitted that the applicants' complaints under Articles 2 and 3 of the Convention and Article 4 of Protocol No. 4 to the Convention concerning the alleged lack of access to an effective asylum procedure should be declared inadmissible as an abuse of the right of individual application, in accordance with Article 35 § 3 (a) of the Convention. They submitted that each time the applicants had been apprehended at the Lithuanian border, they had been wearing clean clothes and had had working phones, which cast doubt on their assertion that they had spent almost two weeks in the forest. Moreover, the applicants had been in possession of valid Cuban passports and their stay in Belarus had been lawful (see paragraph 47 above), but they had not availed themselves of the opportunity to lodge asylum applications at the Lithuanian embassy in Minsk or to cross the border through an official border crossing point. The Government further submitted that the Lithuanian officers had informed the applicants in English, a language which they understood, about the means of lawful entry into Lithuania. However, the applicants had told the border guards that they did not wish to seek asylum in Lithuania and that their destination was Spain, and they had not made asylum requests on any of the occasions when apprehended in Lithuania, until 13 April 2022. Lastly, the Government submitted that the applicants had not been aware of the exact procedure which had been initiated in their name before the Court or the essence of the interim measure granted (see paragraphs 97-100 above). Their representatives at the time had provided the Court with inaccurate information and had invoked the mechanism of interim measures in order to "force" Lithuania to allow the applicants to enter its territory, which amounted to the applicants seeking a "ticket" to Europe and was incompatible with the object and purpose of interim measures.

211. The applicants submitted that the allegations raised by the Government concerned matters that were the object of a factual dispute between the parties and therefore did not fall within the notion of abuse of the right of individual application.

2. The Court's assessment

212. The Court reiterates that under Article 35 § 3 (a) of the Convention an application may be rejected as an abuse of the right of individual application if, among other reasons, it is knowingly based on untrue facts. The submission of incomplete and thus misleading information may also amount to an abuse of the right of application, especially if the information concerns the very core of the case and no sufficient explanation has been provided for the failure to disclose that information. The same applies if important new developments have occurred during the proceedings before the Court and where, despite being expressly required to do so by Rule 47 § 7 of the Rules of Court, the applicant has failed to disclose that information to the Court, thereby preventing it from ruling on the case in full knowledge of the facts. However, even in such cases, the applicant's intention to mislead the Court must always be established with sufficient certainty (see *Savickis and Others v. Latvia* [GC], no. 49270/11, § 149, 9 June 2022).

213. The Court also reiterates that the parties can submit arguments and counter-arguments on the basis of the allegations made in the case, which the Court can accept or reject, but that such allegations cannot in themselves be regarded as an abuse of the right of individual application (see *Yasak v. Türkiye* [GC], no. 17389/20, § 137, 5 May 2026).

214. In the present case, the issues raised by the Government in their objection as to an abuse of the right of individual application concern various factual circumstances which are disputed by the parties and which are closely related to the merits of the applicants' complaints under Articles 2 and 3 of the Convention and Article 4 of Protocol No. 4 to the Convention concerning their removal to Belarus, as well as the merits of their complaint under Article 34 of the Convention concerning the alleged failure of the Lithuanian authorities to comply with the interim measure indicated by the Court. Without examining the merits of those complaints, the Court is not in a position to find that the applicants knowingly based their application on untrue facts or that they sought to mislead the Court. Accordingly, their complaints cannot be dismissed as an abuse of the right of individual application.

215. The Court therefore rejects the Government's objection under Article 35 § 3 (a) of the Convention.

B. Scope of the case

216. Before the Grand Chamber, the applicants made submissions concerning the reception conditions at Medininkai FRC and Pabradė FRC and a lack of medical and psychological help in those facilities. Those complaints were not included in the application form, the Government were not given notice of them in the Chamber proceedings, and no questions in those respects were put to the parties after the case was relinquished to the Grand Chamber. The applicants did not indicate whether they intended to raise those grievances as new complaints under the Convention (see *Grosam v. the Czech Republic* [GC], no. 19750/13, § 90, 1 June 2023).

217. The Court reiterates that it has no power to substitute itself for the applicant and formulate new complaints simply on the basis of the arguments and facts advanced (ibid., § 91). It considers that the applicants did not formulate a "complaint" regarding the matters in question, and that, accordingly, those matters do not fall within the scope of the present case.

II. ALLEGED VIOLATIONS OF THE CONVENTION ON ACCOUNT OF THE APPLICANTS' REMOVAL TO BELARUS

218. The applicants complained that they had been returned to Belarus on six occasions – 31 March and 1, 2, 4, 6 and 9 April 2022 – without any examination of their requests for international protection, which had exposed them to the risk of being returned to their country of origin and of ill-treatment at the hands of the Belarusian authorities. Moreover, they had not had an effective remedy in respect of that complaint. They relied on Articles 2, 3 and 13 of the Convention and Article 4 of Protocol No. 4 to the Convention.

219. The Court, being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018) and having regard to the circumstances of the present case, considers that the applicants' complaints regarding their removal to Belarus fall to be examined under Article 3 of the Convention and Article 4 of Protocol No. 4 to the Convention, while their complaint of a lack of an effective remedy falls to be examined under Article 13 of the Convention taken in conjunction with those provisions.

Those provisions read as follows:

Article 3

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 4 of Protocol No. 4

"Collective expulsion of aliens is prohibited."

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. The parties' submissions

1. The applicants

(a) Whether actions taken by third States may affect – and if so, how – the Contracting States' obligations under the Convention

220. The applicants submitted that a Contracting State's obligations under the Convention could not be side-stepped or diluted on account of a third State's conduct. However, it was possible that the conduct of a third State might inform and even define the scope of an obligation under the Convention.

221. They submitted that Article 3 of the Convention imposed a procedural obligation on the Lithuanian authorities to conduct an assessment of the adequacy of the Belarusian asylum procedure and to determine whether the applicants, in the event of removal to Belarus, would receive sufficient protection against direct or indirect *refoulement*. Furthermore, Article 3 imposed a positive preventive obligation on the Lithuanian authorities not to remove the applicants to Belarus if there were substantial grounds to believe that they would face a real risk of being subjected there to treatment contrary to that provision. Therefore, consideration of the conditions in, and the conduct of, the third State – Belarus in the instant case – was inherent in the procedural and preventive obligations incumbent on the Lithuanian authorities under Article 3 of the Convention. However, any alleged instrumentalisation of migration by Belarus was legally irrelevant, as Article 3 admitted of no exceptions, even in the most difficult circumstances.

222. They further submitted that the actions of third States could not absolve respondent States of their obligations under Article 4 of Protocol No. 4, since protection under this provision was instrumental to the absolute protection against *refoulement* and ill-treatment under Article 3 of the Convention. However, the actions of third States could create objective obstacles preventing asylum-seekers from making use of the available means of legal entry into the respondent State. The applicants contended that objective circumstances that fell outside the asylum-seekers' control should be factored in as cogent reasons for not using a means of legal entry, in order to ensure effective protection against *refoulement* under Article 4 of Protocol No. 4, regardless of which State was responsible for them.

(b) Article 3 of the Convention

(i) As to the facts of the case

(α) Whether the applicants expressed a wish to seek international protection in Lithuania

223. The applicants submitted that each time they had encountered Lithuanian border guards, they had asked for asylum orally in English, but the border guards had refused to accept their asylum requests, at times simply declaring that asylum would not be granted (see paragraphs 60 and 66 above) and other times not providing any reasons at all.

224. The applicants contended that they had offered a description of events which was consistent, coherent, credible and detailed. They had maintained throughout the proceedings before the domestic authorities and before the Court that they had communicated their request for asylum to the Lithuanian authorities and they had referenced specific incidents when that intention had been made clear to the authorities.

225. The applicants further submitted that the question whether they had expressed a wish to seek international protection in Lithuania was a matter in relation to which the State possessed exclusive or substantial knowledge. That was due to the objective difficulties faced by the applicants in recording their interactions with the border guards. In particular:

(i) The summary returns had been carried out on the basis of the national legislation which did not allow the registration of asylum applications lodged by individuals who had crossed the border irregularly, thus the applicants had not had a practical opportunity to prepare a written asylum application.

(ii) The applicants had never been provided with a written decision on the refusal of entry on which they could have indicated their asylum request (in contrast to *M.A. and Others v. Lithuania*, no. 59793/17, § 108, 11 December 2018).

(iii) There had been no individual examination of their situation during any of the removals and they had not been given access to an interpreter, although they spoke no Lithuanian and had only limited proficiency in English; their exchanges with the border guards had been brief, they had not been asked to sign any documents, and they had been in a state of disarray and confusion.

(iv) The applicants had consistently stated that their phones had been seized during each encounter with the Lithuanian authorities (see paragraphs 61, 67 and 85 above). Moreover, the Lithuanian officers had cut up their SIM cards before the removal of 9 April 2022 and the Belarusian officers had subsequently damaged their phones (see paragraph 85 above). Those circumstances, together with the threatening and sometimes violent attitude of the Lithuanian border guards, had made it difficult if not impossible for the applicants to collect evidence.

(v) The applicants had been stranded in the forest in the border area and had not had any assistance from any civil society organisations or human rights defenders in Belarus in order to prepare asylum applications (in contrast to *M.A. and Others v. Latvia* (dec.), no. 25564/18, 29 March 2022).

226. Furthermore, there was circumstantial evidence supporting the applicants' account. In particular: (i) the official reports drawn up by the border guards (see paragraphs 49, 51, 53, 55, 57 and 84 above) confirmed that the applicants had been summarily removed on the basis of legislation that prevented the registration of asylum applications and an individualised assessment of their circumstances; (ii) reports from reputable sources corroborated the applicants' account that during summary return operations, the Lithuanian authorities ignored requests for international protection, used violence and seized asylum-seekers' phones (see paragraph 208 above); and (iii) the applicants' actions had been consistent with their account – they had complied with the border guards' requests to present their passports, they had been transparent about not having a visa to enter Lithuania, and moreover, they had subsequently been granted refugee status in Lithuania.

(β) Whether the applicants presented forged Spanish return documents to the Lithuanian border guards

227. The applicants submitted that they had identified themselves solely with their Cuban passports and had never presented any other documents. The official reports of the border guards confirmed that the Cuban passports had been the only documents used by the applicants for identification (see paragraphs 49, 51, 53, 55, 57 and 80 above).

228. The applicants contended that their genuine intention to seek asylum in Lithuania was proven by the fact that they had all been granted refugee status in Lithuania, where they lived and worked to the present day.

229. They denied any involvement in the creation or use of the forged Spanish return documents. As to when and how the Lithuanian authorities might have come into contact with the documents, the applicants reiterated that during each encounter with the Lithuanian authorities, their belongings had been searched and their phones had been examined by the border guards. The applicants could not know exactly what content had been retrieved from their phones during these examinations. Regarding the potential origin of the documents at issue, the applicants submitted that while travelling from Russia to Belarus and then to Lithuania, they had communicated by telephone with various individuals and groups offering support to asylum-seekers. They had shared their identity details with several people that they had been in contact with, but they could not confirm who might have created the Spanish return documents. In any event, they had never shown those documents to the Lithuanian border guards.

(ii) As to the respondent State's compliance with its obligations under Article 3 of the Convention

230. The applicants submitted that Lithuania had failed to fulfil its procedural obligations under Article 3 of the Convention, which had been laid down in the Court's case-law (they referred to *Ilias and Ahmed v. Hungary* [GC], no. 47287/15, 21 November 2019), because there was no evidence that, prior to the removals, the Lithuanian authorities had taken into consideration either the well-known general risks of *refoulement* faced by asylum-seekers in Belarus or the applicants' individual situations.

231. The applicants submitted that the general risk of *refoulement* faced by asylum-seekers in Belarus, and in particular by Cuban nationals, had been well known at the material time and it could have been freely ascertained from a wide number of sources. They referred to reports by the US Department of State, Amnesty International and Human Constanta, a Belarusian human rights organisation operating in exile, about the serious shortcomings of the Belarusian asylum system.

232. They further submitted that the Lithuanian authorities had removed them to Belarus despite the well-known and easily accessible information indicating a real risk of ill-treatment in that country; in this connection, the applicants referred to a number of publicly available reports. The removals had also exposed them to a real risk to their life and limb given the conditions in which they had been pushed back, namely, prolonged exposure to below-freezing temperatures in the forest and the lack of access to food, water, shelter, and necessary medical assistance. In this connection, the applicants referred to publicly available reports of migrants dying at the border.

233. The applicants submitted that, according to the Court's case-law, before expelling an individual, the State must *proprio motu* take into consideration the risks that are well-known and freely ascertainable from a wide number of sources, regardless of whether the individual expressly referred to such fears in the event of being returned (they referred to *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, §§ 114, 118, 133 and 157, ECHR 2012).

(c) Article 4 of Protocol No. 4 to the Convention

234. The applicants submitted that it was uncontested that they had been summarily returned to Belarus on multiple occasions between 31 March and 9 April 2022. Those removals had been carried out in violation of Article 4 Protocol No. 4 to the Convention. They had been compelled to leave the country as a group without any reasonable or objective examination of the individual circumstances of each member of the group. The expulsions had been carried out under national legislation mandating automatic removal of

individuals who had entered the territory irregularly, without any consideration of their individual circumstances (see paragraph 32 above).

235. The applicants submitted that the two-tier test set out in *N.D. and N.T. v. Spain* ([GC], nos. 8675/15 and 8697/15, 13 February 2020) was not applicable in the present case. Firstly, in contrast to the applicants in that case, the present applicants had been genuine asylum-seekers fleeing an identified risk of violations of Articles 2 and 3 in the neighbouring country. Secondly, they had never joined large groups of migrants attempting to cross the border by force, had not created a disruptive situation or endangered public safety, and had not used force or resisted the Lithuanian officers.

236. In any event, they submitted that Lithuania had failed to comply with the first tier of the test, since it had not provided for genuine and effective access to means of legal entry. The applicants contended that none of the means of legal entry that had existed at the material time (the possibility of lodging asylum applications at official border crossing points or at the Lithuanian embassy in Minsk, or the "humanitarian exception" provided for by law, whereby border guards could accept asylum applications lodged by aliens who had crossed the border illegally in view of their vulnerability or other individual circumstances) could be considered genuine and effective; they made detailed submissions regarding each of those avenues and referred to the available data and relevant reports.

237. As for the second tier of the test, the applicants submitted that they had had cogent reasons not to make use of available means of legal entry. Each time they had been removed to Belarus by Lithuanian border guards, they had been returned to unofficial border crossings and left to walk through remote, forested areas, without any guidance as to how they could reach official crossing points or why they should do so – this was corroborated by, among other sources, the reports cited in paragraphs 170 and 208 above. The applicants' ability to access official border crossing points was further hampered by various geographical obstacles and weather conditions. Moreover, it was a known fact that the Belarusian officials routinely transported foreigners along the border and forced them to cross it in an unauthorised manner. Although not all those obstacles had been attributable to the respondent State, as required by *N.D. and N.T. v. Spain* (cited above, § 201), the applicants contended that objective circumstances falling outside the asylum-seekers' control should be factored in as cogent reasons for illegal entry, in order to ensure effective protection against *refoulement*.

(d) Article 13 of the Convention taken in conjunction with Article 3 of the Convention and with Article 4 of Protocol No. 4 thereto

238. The applicants submitted that, in cases of expulsion, Lithuanian law did not provide a remedy with automatic suspensive effect, which was a necessary condition for it to be considered effective. Furthermore, even if a remedy had existed, it would not have been accessible to the applicants

because they had not been issued with formal return decisions and had not been provided with information about the legal basis for their removal or ways of challenging it. In addition, they had not had access to interpreting or legal assistance, and the removals had been implemented in just a few hours. Thus, the overall circumstances had made it impossible for them to challenge the summary removals.

2. The Government

(a) Whether actions taken by third States may affect – and if so, how – the Contracting States' obligations under the Convention

239. The Government stated that, to their knowledge, the Court had never before been confronted with a case where a third State had deliberately taken coercive actions not only to physically force people into the Contracting States' jurisdiction but also to undermine their human rights. While the Court had dealt with several cases concerning mass arrivals of irregular migrants at the Contracting States' borders and had recognised the difficulties that those States faced in such situations, it had not yet dealt with a case where a third State was directly responsible for, and was intentionally instrumentalising, irregular migration.

240. The Government submitted that such coercive actions unquestionably affected the Contracting States' obligations under the Convention. While the Contracting States were obliged to "secure to everyone within their jurisdiction the rights and freedoms" enshrined in the Convention and the Protocols thereto, they could not be obliged to do things that would be impossible or disproportionately burdensome in view of the coercive actions taken by a third State. Nor should they be obliged to secure an individual's rights and freedoms at the expense of the rights and freedoms of a broader group of individuals. In the Government's view, the Court must recognise that, in certain circumstances, finding a violation of the Convention in respect of one individual could perversely incentivise the third State to intensify its unlawful conduct, thereby jeopardising the rights and freedoms of others. The Court should also recognise that, unlike in the previous cases concerning mass influxes of irregular migrants, the influx in the present case had been in the hands of an actor which could decide at any moment to rapidly intensify it. In view of all those considerations, the Government submitted that, while the core obligations of the Contracting States under the Convention remained intact, the specific measures which they were obliged to undertake could, in certain contexts, be made less stringent.

241. The Government contended that the above approach was in line with the Court's case-law. In particular, it referred to several cases concerning Transdniestria, in which the Court had found that, while Moldova retained jurisdiction over Transdniestria, given Russia's coercive actions there – in particular, its military and political support for the separatist

regime – Moldova's Convention obligations were reduced to certain positive obligations (the Government relied on *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 332, ECHR 2004-VII). They acknowledged that the situation in Transdniestria was not the same as that at the Lithuanian-Belarusian border, and did not contend that Lithuania's obligations at the border were limited to positive obligations. However, that case-law showed that the Court had previously found that a Contracting State's obligations under the Convention could be affected by coercive actions taken by another State. Moreover, the Court had recognised the importance of striking a "fair balance between the general interest and the interests of the individual" and of avoiding the imposition of "an impossible or disproportionate burden" on the Contracting State (ibid.).

242. The Government invited the Court to take a similar approach in the present case. They submitted that precisely how a third State's coercive actions may impact the Contracting States' obligations under the Convention depended on the specific obligation and the coercive action in question.

(i) Obligations under Article 3 of the Convention

243. The Government invited the Court, when assessing the compliance of Lithuania with this obligation, to take into account the context of Belarus's coercion of migrants to enter Lithuanian territory *en masse*. The Government accepted that those coercive actions did not negate the obligation at issue. However, they argued that the Court should be very cautious in accepting the applicants' assertion that they faced a real risk of treatment contrary to Article 3 of the Convention in Belarus. In that connection, the Government observed that the applicants had travelled to Belarus voluntarily and legally.

244. The Government contended that finding that all irregular migrants coerced by Belarus to enter Lithuanian territory faced a real risk of treatment contrary to Article 3 of the Convention in Belarus would have significant consequences. It would put Lithuania in a very difficult position, as such migrants numbered in the thousands; if Lithuania was not allowed to return any of them to Belarus, it would be effectively compelled to admit them all. However, that would be in tension with the principle established in the Court's case-law that the Contracting States have the right to control the entry, residence and expulsion of aliens. Furthermore, such a finding would encourage more people to travel to Belarus and seek to illegally enter Lithuania, while also encouraging Belarus to coerce even more such migrants into the territory of Lithuania and to subject them to treatment contrary to Article 3 of the Convention if they were returned. That would result in more people being exposed to human rights violations in Belarus and would constitute a major setback for human rights in the region.

245. The Government emphasised that they were not denying that there was an obligation not to remove an alien to a country where substantial grounds had been shown for believing that the person in question would face

a real risk of being subjected to treatment contrary to Article 3 of the Convention. However, the fact that the present situation had arisen from Belarus's coercive actions meant that the Court should be very careful in taking its decision.

(ii) Obligations under Article 4 of Protocol No. 4 to the Convention

246. The Government submitted that the fact that coercive actions by third States could affect the analysis under Article 4 of Protocol No. 4 to the Convention was implicit in the principle established in *N.D. and N.T. v. Spain* (cited above), according to which there was no violation of that provision where the applicant had not made use of means of legal entry and there had been no cogent reasons not to do so based on objective facts "for which the respondent State was responsible" (ibid., § 201). It thus followed that if the applicant did not make use of means of legal entry owing to the actions of a third State, the Court should not find a violation of Article 4 of Protocol No. 4.

247. The Government observed that the applicants were attempting to challenge the Court's case-law by suggesting that the principles in *N.D. and N.T. v. Spain* (cited above) should not be applied if the failure to use means of legal entry had not been the applicants' fault. However, if a violation of Article 4 of Protocol No. 4 was found in cases where that fault lay with a third State, such a State could intentionally prevent migrants from accessing means of legal entry into a Contracting State, in order to impose on the latter the significant burden of conducting individualised examinations in respect of every irregular migrant crossing at any point along the border. That would undermine the very rationale behind *N.D. and N.T. v. Spain* (cited above).

(b) Article 3 of the Convention

(i) As to the facts of the case

248. The Government submitted that on 31 March 2022 the applicants had arrived in Lithuania not with the aim of seeking international protection but asserting their right to go to Spain through Lithuania and presenting forged Spanish return documents (see paragraphs 59 and 72 above). Although the applicants denied having presented those documents to the border guards, they had not provided a credible and convincing explanation as to how the SBGS may have otherwise obtained those documents, which contained the applicants' personal details (see paragraph 59 above).

249. The applicants had been apprehended by the SBGS officers again on 1, 2, 4 and 6 April 2022 following the illegal crossing of the border. As the applicants understood English, they were regularly informed, in line with domestic law (see paragraph 140 above), that if they wished to seek asylum in Lithuania, they had to go to the nearest border crossing point and lodge their applications there.

250. The Government maintained that the applicants had not requested asylum prior to 13 April 2022 (see paragraphs 95 and 96 above). None of the official reports of the SBGS had indicated that such requests had been made (see paragraphs 49, 51, 53, 55, 57 and 80 above). Nor were there any other elements supporting the applicants' assertions to that effect. While the applicants had submitted various instances of correspondence between themselves and the volunteers of *Sienos Grupė*, in none of those conversations had they asked for information about the asylum procedure or for assistance in lodging asylum applications. Furthermore, during the preliminary interviews in the asylum proceedings, the first and second applicants had expressly admitted that their original intention when entering Lithuanian territory had been to travel to Spain (see paragraphs 97 and 98 above). That was consistent with the video of 2 April 2022, in which the second applicant stated that she did not want to stay in Lithuania (see paragraph 74 above).

251. The Government submitted that the situation on the Lithuanian-Belarusian border should have been known to the applicants at the relevant time, especially as they had consulted lawyers in Canada and Spain (see paragraphs 97-99 above). Accordingly, the Government contended that the applicants had been merely hoping to take advantage of the travel opportunities facilitated by the opening of the border by Belarus.

(ii) As to the respondent State's compliance with its obligations under Article 3 of the Convention

252. The Government submitted that the applicants had arrived in Belarus from Russia, where, at the relevant time, they had not been in danger of ill-treatment. As they had valid Cuban passports and a visa-free regime was applicable to Cuban citizens in Belarus (see paragraph 47 above), there was no imminent risk of their expulsion to Cuba.

253. Moreover, Belarus was a party to the 1951 Refugee Convention and its 1967 Protocol, and UNHCR had been active in Belarus at the material time. The assessment of the availability of asylum in Belarus was made difficult by the lack of constructive cooperation by the Belarusian authorities. However, according to publicly available sources, it could not be said that the asylum system there was completely ineffective and that the expulsion of the applicants to Belarus would necessarily have led to them being returned to their country of origin. In that connection, the Government referred to the official website of the UNHCR Representative in Belarus, according to which, as of 30 June 2021, there were 294 people with refugee status living in Belarus, coming mostly from Afghanistan, Georgia and Syria; Belarus was also hosting 2,624 people with complementary protection, predominantly from Ukraine, Syria and Yemen, and 6,103 stateless persons, whose top three countries of former habitual residence were Russia, Latvia and Kazakhstan. Furthermore, according to the website, UNHCR had been operating in

Belarus since 1995, providing assistance to people fleeing conflict and persecution in Ukraine, Syria, Afghanistan, Georgia, Iraq and other countries.

254. The Government also submitted that denial of entry into Lithuania did not necessarily leave aliens dependent exclusively upon the Belarusian asylum system, since they could lodge their asylum applications at the Lithuanian embassy in Minsk (see paragraph 155 above), an opportunity which had been used by 27 aliens (see paragraph 27 above).

255. Lastly, the Government noted that the Lithuanian authorities had tried to act in accordance with bilateral agreements with Belarus concerning cross-border cooperation, but that State had failed to comply with its obligations (see paragraph 40 above). In the context of the instrumentalised migration carried out by Belarus and in the absence of practical cooperation with the Belarusian border authorities, the policy of denial of admission into Lithuanian territory was applied on an individual basis to aliens illegally crossing the State border. Those restrictions were necessary in a democratic society to safeguard the national security and public order of Lithuania, as well as to protect the external border of the European Union and stabilise the situation of increased illegal migration.

(c) Article 4 of Protocol No. 4 to the Convention

256. The Government submitted that Lithuanian law had provided the applicants with several possible means of seeking international protection, but that they had failed to use them. Thus, any lack of individualised expulsion decisions could be attributed to the applicants' own conduct.

257. Firstly, the applicants could have requested asylum at the Lithuanian embassy in Minsk. That path had been used by 27 individuals (see paragraph 27 above).

258. Secondly, the applicants had had the possibility of lodging asylum applications at official border crossing points. They had been in possession of valid Cuban passports and benefited from visa-free travel to Belarus (see paragraph 47 above). Accordingly, they could have reached Lithuanian territory through an official border crossing point. Thirdly, access to Lithuanian territory could be granted on humanitarian grounds (see paragraph 142 above), and the authorities were also required to assess whether the alien had arrived from a country where he or she faced a risk of persecution (see paragraph 37 above).

(d) Article 13 of the Convention taken in conjunction with Article 3 of the Convention and with Article 4 of Protocol No. 4 thereto

259. The Government submitted that the question of effective remedies was "of no relevance" because, unlike the applicants in *M.A. and Others v. Lithuania* (cited above), the applicants in the present case had not tried to enter Lithuanian territory through official border crossing points, had not expressed a wish to seek asylum and had been trying to reach Spain. The

Government reiterated that the applicants had been informed how to legally enter Lithuania and that, had they used those means, their asylum applications would have been accepted.

B. Third-party submissions

1. Governments of Croatia, the Czech Republic, Denmark, Estonia, Finland, Latvia, Norway and Poland

(a) General remarks on instrumentalisation of migration

260. All of the intervening Governments emphasised that hybrid attacks in the form of instrumentalisation of migration posed a serious threat to the national security and public order of the States directly affected by such attacks, as well as to the security of the entire region. The Governments of Finland, Latvia and Norway also referred to the generally deteriorating security situation in Europe, in view of the actions of Belarus and Russia.

261. The Governments of Poland and Latvia provided data showing the increase in the number of attempts to illegally cross their borders with Belarus in 2021-22 and an overview of the emergency measures which they had taken in response. The Government of Poland submitted that there had been 39,674 attempts to illegally cross its border from Belarus in 2021, compared to 129 in 2020, 20 in 2019, and 4 in 2018. In reaction to the threat posed by the behaviour of Belarus, a state of emergency had been introduced on 2 September 2021 in the relevant areas close to the border, remaining in force until 30 November 2021. It imposed certain restrictions, such as a ban on entering the entire zone covered by the state of emergency, with exceptions for selected categories of persons. The Government of Latvia submitted that the number of attempts to cross the Latvian-Belarusian border illegally had been as follows: 635 in September 2021, 577 in October 2021, 632 in November 2021, 1,392 in December 2021, 1,461 in January 2022, 863 in February 2022, and 267 in March 2022. Latvia had declared a state of emergency in four municipalities bordering Belarus, which had been in force from 11 August 2021 until 10 August 2023.

262. The Government of Finland submitted that Russia had deployed instrumentalised migration at the Finnish border in 2015-16, which had demonstrated Russia's ability to leverage migration as a tool of hybrid influence. Furthermore, in December 2023, hundreds of people, assisted by the Russian authorities, had gathered at the crossing points of Finland's eastern border over a short period of time, halting the normal functioning of the border crossing points and posing a threat to security and public order. Russia's activities, including instrumentalised migration, remained the greatest threat to Finland's national security.

263. All of the intervening Governments invited the Court to consider the specific context of the instrumentalisation of migration when examining the

legal issues arising in the cases before it. The Governments of Croatia, Denmark, Estonia and Latvia emphasised the importance of striking a fair balance between, on the one hand, the rights of the individual and, on the other hand, the ability of the Contracting States to defend themselves against hybrid attacks. The Governments of Latvia and Norway submitted that the Contracting States should be granted a substantial margin of appreciation when determining their response to such hybrid attacks. The Governments of Denmark and Finland emphasised that the Convention was a living instrument which had to be interpreted in the light of present-day conditions. The Governments of Estonia, Finland and Norway submitted that authoritarian regimes must not be allowed to abuse the Convention, so as to undermine its underlying values and purpose; they referred to Articles 17, 18 and 35 § 3 (a) of the Convention and to the Court's judgment in *Ždanoka v. Latvia (no. 2)* (no. 42221/18, §§ 55-56, 25 July 2024, concerning the right to stand for election under Article 3 of Protocol No. 1 to the Convention), in which the Court had taken account of the general context of the Russian aggression in Europe since 2008. The Government of Finland further emphasised that it would be contrary to the object and purpose of the Convention if it was interpreted in a manner that would enable third States to use it to harm the Contracting States.

264. Lastly, all of the intervening Governments submitted that the duty to fulfil their Convention obligations must not leave the Contracting States unable to protect themselves from actions of hostile third States, nor impose an impossible and disproportionate burden on them.

(b) Article 3 of the Convention

265. The Government of Latvia submitted that the Contracting State should be regarded as having fulfilled its relevant obligations under Article 3 of the Convention as long as it provided genuine and effective legal avenues for seeking asylum, accompanied by adequate procedural guarantees and effective domestic remedies; the Contracting States had the right to put in place specific arrangements for lodging asylum applications.

266. The Government of Finland, while acknowledging that Article 3 of the Convention was absolute and that no derogation from it was permitted, submitted that the content of Article 3 obligations in the immigration context allowed for context-specific interpretation, in particular with regard to questions of jurisdiction, attribution and the threshold for its applicability or for finding a violation.

(c) Article 4 of Protocol No. 4 to the Convention

267. All of the intervening Governments referred to the principles established by the Court in *N.D. and N.T. v. Spain* (cited above, § 201). The Governments of the Czech Republic, Denmark, Estonia, Latvia and Norway

submitted that the two-tier test laid out in that judgment must be equally applicable to situations in which the States situated on the external borders of the Schengen Area were faced with instrumentalised migration orchestrated by other States. The Government of Denmark submitted that the Contracting States should be allowed to restrict access to means of legal entry at their external borders in a proportionate manner corresponding to the threat created by the instrumentalisation. The Government of the Czech Republic submitted that when the reasons for not crossing the border in an authorised matter could not be attributed to the Contracting State but to a third State, they should not constitute cogent reasons for failing to use legal means of entry, according to the test of *N.D. and N.T. v. Spain* (cited above). The Government of Finland submitted that when assessing the availability of genuine and effective means of legal entry, the Court should take into account the nature of the threat posed by instrumentalised migration and the resulting realistic ability of the targeted State to make available means of legal entry in such exceptional circumstances. Any appeal to such exceptional circumstances by the targeted State must be substantiated.

268. The Government of Denmark submitted that it was essential to understand the dual nature of the situation of an individual migrant used in a hybrid attack: on the one hand, he or she was an individual with certain rights under international human rights law; on the other, he or she was also a hybrid weapon employed by the attacking State. The Government of Estonia also invited the Court to carry out a close scrutiny of the applicants' behaviour and their possible role in the events.

2. Commissioner for Human Rights of the Council of Europe

269. The Commissioner for Human Rights of the Council of Europe submitted that summary returns took place without an individualised procedure and without the issuing of expulsion decisions; they were often conducted in remote areas and/or at night, which made the availability of video or photo evidence or other evidence from third parties much less likely; the media, and humanitarian and human rights actors had limited or no access to the areas where such returns took place; and the destruction of phones by the expelling State or the State of return further complicated the collection of evidence. The Commissioner submitted that, given the circumstances, reports of international bodies and civil society about the scale and frequency of summary returns could be of particular importance.

270. The Commissioner submitted that, according to the Court's case-law, the prohibition of *refoulement* under Article 3 of the Convention was absolute, non-derogable and not subject to any limitations, either in relation to the challenges faced by States to manage migration or for national security reasons, and that it applied irrespective of the person's conduct. Summary return practices were incompatible with those principles. While the Commissioner unreservedly condemned the instrumentalisation of

asylum-seekers and migrants by Belarus and recognised the challenges faced by the affected States, he emphasised that the geopolitical situation could not justify violations of absolute Convention rights or a harsher treatment of the individuals who had been subjected to instrumentalisation.

271. The Commissioner further submitted that the two-tier test established in the Court's judgment in *N.D. and N.T. v. Spain* (ibid.) should not be applied to situations that engaged Articles 2 or 3 of the Convention. The exception to the obligation to carry out an individual examination before expulsion should be applied as restrictively as possible. If the two-tier test was applied, the examination of genuine and effective access to means of legal entry should not be limited only to elements for which the respondent State was responsible, in order to avoid a practical gap in the protection afforded by Article 4 of Protocol No. 4. Lastly, the Commissioner submitted that the "own conduct" test should not be applied to situations in which an instrumentalising State directed the movement of asylum-seekers and migrants across the borders of the respondent State.

3. UNHCR

272. UNHCR submitted that, at the material time, asylum-seekers had lacked effective access to Lithuanian territory and to the asylum procedure at border crossing points and the Lithuanian embassy in Minsk. In 2022 and 2023, UNHCR and its partner organisation, the Lithuanian Red Cross, had documented cases of individuals who had requested international protection at border crossing points on the Lithuanian-Belarusian border but had been denied access to the asylum procedure. Moreover, the border was almost 680 km long and the distances between border crossing points were lengthy and contained natural barriers, such as swamps, rivers, lakes and forests.

273. As for the possibility to apply for asylum at the Lithuanian embassy in Minsk, it could not be considered effective either, particularly since doing so did not constitute grounds for entering Lithuanian territory and left persons vulnerable to *refoulement* from Belarus. There had been 27 applications for asylum at that embassy; according to the information available to UNHCR, 21 cases had been discontinued because the Migration Department had lost contact with the applicants and six applications had been rejected; five of them remained pending at the appeal stage.

274. UNHCR emphasised that the protection against *refoulement* was not dependent on the formal submission or registration of an asylum claim and it applied to anyone seeking asylum, regardless of their mode of entry, migration status or the use of forged travel documents. This included asylum-seekers considered to have been used as "instruments of influence" by another country. The intervener further submitted that the principle of *non-refoulement* and the prohibition of collective expulsion were inextricably linked, that they remained applicable even in declared situations of emergency and "instrumentalisation", and that actions by third States could

not alter the legal obligations of the Contracting States under the Convention. The intervener also emphasised the importance of an effective remedy against summary removals and of access to legal aid in that regard.

4. AIRE Centre, ECRE, DCR, ICJ and IRAP, acting jointly; Amnesty International; ECCHR; Rule of Law Clinic of the Democracy Institute of the CEU; UN Working Groups and Special Rapporteurs, acting jointly; and the Chair for Public Law and Human Rights of the University of Münster with a group of 22 academics

275. All interveners submitted that the practice of summary returns was incompatible with the prohibition of *refoulement* and collective expulsion. According to numerous international treaties and the Court's own case-law, the prohibition of *refoulement* was absolute and could not be derogated from, even in situations of a mass influx of migrants or other emergency, such as instrumentalisation of migration by another State. The UN Working Groups and Special Rapporteurs (acting jointly) and ECCHR further submitted that "pushbacks", which were carried out without any individualised procedures, were of an inherently unlawful nature and exposed individuals to numerous grave human rights violations, including the risk of ill-treatment, arbitrary detention and enforced disappearance. The AIRE Centre, ECRE, DCR, ICJ and IRAP (acting jointly), the Rule of Law Clinic of the CEU Democracy Institute, and the Chair for Public Law and Human Rights of the University of Münster with a group of 22 academics also referred to EU asylum law and submitted, in particular, that the newly adopted "Crisis Regulation" (see paragraph 183 above) did not allow summary returns even in situations of instrumentalisation.

276. Moreover, the Rule of Law Clinic of the CEU Democracy Institute submitted that "instrumentalisation of migration" was a political term which did not accurately reflect the realities on the ground. The main reason why people undertook dangerous and irregular routes to seek protection in Europe was the absence of adequate legal routes, and not the actions of the Belarusian authorities. Those choosing the route through Belarus were not a homogeneous group, and without an individualised assessment it was impossible to determine whether every such individual had been "instrumentalised". The intervener also submitted that the influx of migrants through the EU-Belarusian border had been much lower than the number of migrants seeking to enter Europe via the Mediterranean route, or the more than 2.5 million asylum-seekers who had arrived in the European Union in 2015-16. The numbers reported by the Lithuanian, Latvian and Polish authorities had not been such as to represent a threat to the national security of those States, particularly taking account of the fact that the same people had been pushed back multiple times; thus, the situation could have been addressed by legal means.

277. All interveners emphasised the importance of carrying out, before the expulsion, an assessment of the individual circumstances of the person and of the conditions in the receiving State. In that connection, Amnesty International referred to various reports on the ill-treatment by Belarusian officials of migrants "pushed back" at the border and the serious shortcomings in Belarus's asylum system. The UN Working Groups and Special Rapporteurs (acting jointly) also pointed to reports on the dire conditions in which migrants often found themselves in the border zone. The Rule of Law Clinic of the CEU Democracy Institute noted that the Court had already found Belarus not to be a safe third country (the intervener referred to *M.A. and Others v. Lithuania*, cited above).

278. Lastly, Amnesty International and the Rule of Law Clinic of the CEU Democracy Institute submitted that, according to their research, people apprehended after trying to illegally cross the Lithuanian border had typically not been redirected to official border crossing points or informed about the possibility to seek asylum there but had been pushed back into the territory of Belarus. Moreover, Belarusian authorities greatly limited migrants' movements within Belarus and precluded them from returning to Minsk. Instead, they forcibly and repeatedly directed them to cross into the European Union at places away from official border crossing points, and effectively forced them to remain in remote areas in life-threatening conditions.

5. Human Rights Monitoring Institute and the Lithuanian Red Cross

279. The Human Rights Monitoring Institute and the Lithuanian Red Cross submitted that, following the adoption of the Minister of the Interior's decision of 2 August 2021 and subsequent legal amendments (see paragraphs 32 and 33 above), there had been no genuine and effective access to the asylum procedure in Lithuania. The Human Rights Monitoring Institute further submitted that, although the emergency legislation provided for the possibility of accepting asylum applications lodged after an illegal crossing of the border if the alien was fleeing military aggression and/or persecution (see paragraph 37 above), at the material time there had been no formal procedure for carrying out such an assessment and in practice that exception had been applied mainly to nationals of Belarus and Russia, whereas citizens of other countries had been in general considered to be "economic migrants". According to the Lithuanian Red Cross, other categories of people whose asylum applications had been accepted were those in respect of whom the Court had indicated interim measures and those who had suffered a particularly severe deterioration of health as a result of the prolonged stay in the border zone.

6. Human Constanta International

280. Human Constanta International submitted that, although Belarus was a party to the 1951 Refugee Convention and its 1967 Protocol, it had yet to establish an effective mechanism for providing international protection. The asylum system was complex and lacked transparency, and the percentage of positive decisions on granting international protection was low. There had been cases where the authorities had refused to grant refugee status and ordered the expulsion of citizens of Afghanistan, Iran or Syria, despite the ongoing armed conflicts in those countries. Moreover, citizens of, *inter alia*, Cuba, Ghana, Somalia, Sri Lanka, Sudan or Uzbekistan had not received any form of protection in Belarus.

281. Lastly, the intervener referred to various reports, according to which, Belarusian border guards forced migrants to cross into the EU countries avoiding official border crossing points, did not allow those stranded near the border to move independently, ill-treated them and failed to provide them with food, water or other necessary help.

7. Global Legal Action Network (GLAN)

282. GLAN submitted that "pushbacks" were typically carried out without any records or paperwork, and often accompanied by the confiscation or destruction of migrants' mobile phones and a ban on civil society organisations engaged in monitoring or providing assistance to migrants. Consequently, photographic or video evidence could play a significant role in corroborating an applicant's account. Applicants sometimes managed to transmit such evidence to third parties, via messaging platforms or on social media, before their own devices were seized, or they relied on evidence obtained from open sources. The authenticity of audio-visual evidence could be verified through techniques such as: (i) geolocation – identifying the geographical location depicted in the audio-visual material and comparing it with satellite imagery; or (ii) chronolocation – identifying the exact or approximate time when an incident occurred or when the audio-visual material was created. The occurrence of convincing digital manipulations or misrepresentations of open-source audio-visual content was much rarer than commonly believed.

C. The Court's assessment

1. The specific and novel context of the present case

283. In the present case – as also in the cases of *A.R. and Others v. Poland* ([GC], no. 42120/21, 24 November 2026) and *H.M.M. and Others v. Latvia* ([GC], no. 42165/21, 24 November 2026) – the Court is confronted with a factual context which it has not previously had to address. The respondent States in these three cases have been the targets of hostile actions carried out

by the Belarusian authorities which the parties and various third-party interveners have described as "instrumentalisation of migration" (see paragraphs 239, 260, 270 and 275 above). The Court considers that, for the purpose of these cases, instrumentalisation of migration by a third State can be understood as comprising the following two elements: first, a third State encourages, facilitates or forces the movement of third-country nationals or stateless persons to the border of a High Contracting Party, with the aim of destabilising that State or the wider region; and secondly, such actions are liable to put at risk essential functions of the State concerned, including the maintenance of law and order, the safeguarding of its national security, and the fulfilment of its human rights obligations under the Convention. It would emphasise that the instrumentalisation of migration is by its very nature an exploitative enterprise, and that treating human beings as "instruments" is an affront to the values of the Convention.

284. It has been acknowledged, notably by various Council of Europe and EU bodies, and not disputed by the applicants or any of the 32 third-party interveners in the present case, that at the material time the Belarusian authorities encouraged, facilitated and forced the arrival of nationals of various other countries in Belarus and their irregular crossing of the border into Lithuania, Latvia and Poland, with the aim of destabilising those States and the European Union as a whole, as a form of retaliation for sanctions which the latter had imposed against Belarus. Indeed, the Belarusian authorities themselves publicly admitted to doing so (see paragraph 204 above). To that end, the Belarusian authorities facilitated the entry into Belarus of foreign nationals, notably through simplified and flexible visa procedures and by promoting organised travel arrangements. These measures were further supported by targeted promotional campaigns conducted in the countries of origin of the foreign nationals (see paragraphs 17, 200 and 206 above). Nor has it been disputed that, in 2021 and 2022, the number of attempts to illegally enter Lithuanian territory and the number of asylum applications lodged there increased several times compared to the preceding years (see paragraphs 23-25 above; see the relevant data concerning Latvia and Poland in paragraph 261 above).

285. The Court has, in the past, dealt with situations of sudden mass arrivals of asylum-seekers and migrants at the Contracting States' borders (see *Hirsi Jamaa and Others*, cited above; *Khlaifia and Others v. Italy* [GC], no. 16483/12, 15 December 2016; *Ilias and Ahmed*, cited above; and *Z.A. and Others v. Russia* [GC], nos. 61411/15 and 3 others, 21 November 2019). Regardless of whether the situation involves instrumentalisation, any State experiencing a sudden mass arrival of irregular migrants and potential asylum-seekers faces challenges in maintaining border control, as well as the risk of its migration and asylum procedures being overwhelmed. However, what distinguishes the present case from the situations of mass irregular migration which the Court has previously examined is the fact that the

irregular border crossings into Lithuania were orchestrated by the Belarusian authorities in pursuit of their own political goals. They sought to weaken Lithuania's ability to exercise sovereignty over its borders and to control the entry of aliens into its national territory. By such actions they endangered not only the national security and public order of Lithuania but also those of the Council of Europe area as a whole.

286. Any attempt to exploit the Convention in the manner described above goes entirely against its object and purpose and also threatens its basic structure. As stated in the Preamble to the Convention, the High Contracting Parties, in accordance with the principle of subsidiarity, have the primary responsibility to secure the rights and freedoms defined in the Convention and the Protocols thereto. Allowing third States to abuse the Convention by taking advantage of the Parties' obligations under it so as to weaken their ability to protect their borders and, as a consequence, their ability to perform essential State functions, to maintain law and order, to safeguard their national security, and ultimately to fulfil those obligations (see paragraph 283 above), would undermine the effectiveness of the protection of fundamental rights which is a cardinal consideration underpinning the whole Convention (see *N.D. and N.T. v. Spain*, cited above, § 171, and the cases cited therein).

287. As a constitutional instrument of European public order (*ordre public*) (see *Loizidou v. Turkey* (preliminary objections), 23 March 1995, § 75, Series A no. 310), the Convention enshrines fundamental values of European democracy (see *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 73, ECHR 2001-V). It is therefore the role of the Court to protect its integrity and to prevent any attempt by hostile States to exploit the Convention by instrumentalising individuals. The Court provides, in accordance with Article 32 of the Convention, the final authoritative interpretation of the rights and freedoms defined in Section I of the Convention (see *Humpert and Others v. Germany* [GC], nos. 59433/18 and 3 others, § 69, 14 December 2023, and the cases cited therein).

288. As it has repeatedly stated in its case-law, the Court does not operate in a vacuum. When assessing the compliance of State authorities with their obligations under the Convention and the Protocols thereto, it must have regard to the general context of the case at both the domestic and the international or regional levels (see *Ždanoka (no. 2)*, cited above, § 55, and the cases cited therein).

289. In the present case, as in the cases of *A.R. and Others v. Poland* and *H.M.M. and Others v. Latvia* (both cited above), the Court is called upon to examine complaints lodged by individuals who, at the time of the instrumentalisation of migration by the Belarusian authorities, crossed the borders illegally from Belarus into the neighbouring countries, from which they were then returned to Belarusian territory (see paragraph 284 above).

290. It is reiterated that Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations,

including the Convention, to control the entry, residence and expulsion of aliens (see *Hirsi Jamaa and Others*, cited above, § 113; *F.G. v. Sweden* [GC], no. 43611/11, § 111, 23 March 2016; *Ilias and Ahmed*, cited above, § 125; *N.D. and N.T. v. Spain*, cited above, § 167; and *Khasanov and Rakhmanov v. Russia* [GC], nos. 28492/15 and 49975/15, § 93, 29 April 2022). The Convention guarantees safeguards to aliens who are within the jurisdiction of one of the Contracting States for the purposes of Article 1 of the Convention, including Article 3 of the Convention, which prohibits the return of any alien to a State in which he or she faces a real risk of being subjected to inhuman or degrading treatment or even torture, and Article 4 of Protocol No. 4, which prohibits the collective expulsion of aliens. Neither of those provisions, nor any other provision of the Convention or its Protocols, grants a self-standing right to aliens to enter the territory of a Contracting State, however. Nor, as the Court has consistently held, is a right to political asylum contained in either the Convention or its Protocols (see, among many other authorities, *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 66, ECHR 2005-I; *Hirsi Jamaa and Others*, cited above, § 113; and *Ilias and Ahmed*, cited above, § 125).

291. The Court notes that the respondent State is also a member State of the European Union and that its borders are also in part external borders of the latter. As a member State of the European Union, it is bound by the relevant obligations under EU law, including duties relating to the control and management of the external borders (see the Schengen Borders Code in paragraphs 176 and 177 above), as well as those relating to the right to asylum that is guaranteed by the Charter of Fundamental Rights of the European Union (see Article 18 of the Charter in paragraph 175 above). In this connection, the Court reiterates that, in accordance with Article 53 of the Convention, its interpretation of the Contracting States' obligations under the Convention cannot have the effect of limiting any obligations incumbent on those States under relevant EU law, including the Charter. It also reiterates that it is not competent to rule formally on compliance with domestic law, other international treaties or EU law (see *Avotiņš v. Latvia* [GC], no. 17502/07, § 100, 23 May 2016).

292. In the light of the foregoing, the Court will now clarify the Contracting States' obligations under the Convention in the specific and novel context of instrumentalisation of migration by a third State.

2. Alleged violation of Article 3 of the Convention

(a) The Court's approach in cases concerning instrumentalisation of migration by a third State

293. Referring to the definition and characterisation that it has given to instrumentalisation of migration (see paragraphs 283-292 above), the Court will now set out the approach that it will follow in cases where individuals

who have attempted to illegally enter a Contracting State's territory and have been returned in a summary manner to the instrumentalising State complain that this entailed a violation of their rights under Article 3 of the Convention.

294. It is important to clarify from the outset that in cases that it has previously decided concerning migration, the Court was confronted with crises or difficulties relating to what it described as "migratory flows" (see, for example, *Khlaifia and Others*, § 241, and *N.D. and N.T. v. Spain*, § 170, both cited above). This needs to be distinguished from the instrumentalisation of migration by a third State. As noted above, this phenomenon represents a deliberate threat to the State, in particular to the integrity of its borders, and is liable to put at risk its essential functions, including the maintenance of law and order and the safeguarding of its national security, as well as its ability to fulfil its human rights obligations under the Convention (see paragraphs 283, 285 and 286 above).

295. As restated above, the Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens (see paragraph 290 above). Furthermore, there is no self-standing right under the Convention or its Protocols to enter a Contracting State's territory. The Court has consistently affirmed the right of States to establish their own migration policies (see *N.D. and N.T. v. Spain*, cited above, § 167, and the cases cited therein). It has also emphasised the importance of managing and protecting borders, and acknowledged that the Contracting States may in principle put arrangements in place at their borders designed to allow access to their national territory only to persons who fulfil the relevant legal requirements (ibid., § 168, and *A.A. and Others v. North Macedonia*, nos. 55798/16 and 4 others, § 115, 5 April 2022). In this connection, the Court would make clear that neither the Convention nor the Protocols thereto preclude the States from restricting entry by aliens through their borders or even fully closing those borders.

296. At the same time, the Court has carefully identified the limits to the States' rights in that respect resulting from the obligations laid on them by Article 3 of the Convention. As is well established in the Court's case-law, even in the most difficult circumstances the prohibition of torture and inhuman or degrading treatment or punishment under Article 3 of the Convention remains fundamental and absolute. In order to fall within the scope of that prohibition, ill-treatment has to attain a minimum level of severity. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see *Soering v. the United Kingdom*, 7 July 1989, §§ 88 and 100, Series A no. 161; *Khlaifia and Others*, cited above, §§ 158-60; and *Savran v. Denmark* [GC], no. 57467/15, §§ 121-22, 7 December 2021).

297. It is equally well established that Article 3 does not permit a State to remove an individual to a country where substantial grounds have been shown for believing that he or she would face a real risk of being subjected there to treatment contrary to that provision (see *Hirsi Jamaa and Others*, § 114; *Ilias and Ahmed*, § 126; and *Khasanov and Rakhmanov*, § 93, all cited above). This obligation corresponds to the essence of the protection against ill-treatment that must be afforded to all individuals, including those who have entered the territory of the State illegally as a result of the instrumentalisation of migration. A Contracting State cannot be absolved of its substantive obligations under Article 3.

298. From the substantive guarantee of protection against ill-treatment the Court has derived certain procedural safeguards that serve to render that guarantee practical and effective; they represent the Contracting States' procedural obligations under Article 3 of the Convention. The Court has held that, in those cases where the authorities seek to return an asylum-seeker to an intermediary third country without examining the merits of his or her asylum claim, they have to assess whether the individual will have access to an adequate asylum procedure in that country (see *Ilias and Ahmed*, cited above, §§ 128-41). The Court considers that, in the specific context of instrumentalised migration, where the instrumentalising State sought to exploit third-country nationals or stateless persons by encouraging, facilitating or forcing their movement to a Contracting State's territory (as set out in paragraphs 283-285 above), an assessment of whether those individuals would have access to an adequate asylum procedure in the instrumentalising State lacks pertinence, in view of the purpose of such a policy and the manner of its implementation.

299. As to the assessment that national authorities are required to carry out under Article 3 of the Convention before removing an individual in the specific situation where the Contracting State is being targeted by instrumentalised migration, the Court considers that in order to preserve the effectiveness of the protection afforded by this provision, the national authorities have an obligation to detect those individuals who would be particularly at risk of suffering or enduring ill-treatment. This refers to (i) those who present evident personal vulnerabilities (for example, owing to age, ill health or disability), and (ii) those with a specific basis for claiming that removal to the instrumentalising State would evidently expose them to a real and immediate threat to life or a real and immediate risk of ill-treatment reaching the threshold of severity under Article 3. Regarding the second category, the burden of proof will be on the person concerned, who must adduce such prima facie evidence as may be reasonably expected in the circumstances (see paragraph 300 below). Accordingly, applicants who then complain before the Court of having been subjected to removal in violation of that provision must be able to demonstrate that they came within one of these categories.

300. The Court recognises the difficulties facing applicants in gathering evidence in the circumstances created by instrumentalisation of migration and will therefore be attentive to any valid reasons that are given as to why such evidence has not been put forward. Reports and statements from reputable sources which describe the general situation at the material time can be relevant when corroborating an applicant's account (see, for example, *M.H. and Others v. Croatia*, nos. 15670/18 and 43115/18, § 270, 18 November 2021, and *A.R.E. v. Greece*, no. 15783/21, §§ 226-29, 7 January 2025, and in a different context, *Ukraine and the Netherlands v. Russia* (dec.) [GC], nos. 8019/16 and 2 others, §§ 442-44, 30 November 2022; see also the third-party submissions of the Council of Europe Commissioner for Human Rights in paragraph 269 above). However, they cannot in themselves constitute prima facie evidence, in the absence of a detailed, specific and consistent account by applicants or any other relevant elements relating to their individual circumstances.

301. It follows that, in a situation of instrumentalised migration, the removal of a foreign national to the instrumentalising State will not, as such, constitute a violation of Article 3 of the Convention. It is only those individuals with evident personal vulnerabilities, or who can show a specific basis for the claim that, if removed to the instrumentalising State, they would be evidently exposed to a real and immediate threat to life or a real and immediate risk of severe ill-treatment, who need to be detected by the national authorities with a view to assessing their need for protection and taking appropriate action to comply with their obligations under Article 3 of the Convention (see paragraphs 296 and 297 above).

302. The Court would emphasise here the importance of the fulfilment by domestic authorities of their obligations, as these have been set out above. As affirmed in the Preamble, theirs is the primary responsibility to secure the rights and freedoms defined in the Convention and its Protocols (see, among many other authorities, *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26374/18, § 250, 1 December 2020). This applies all the more in the migration context, when it comes to ensuring protection against severe ill-treatment, as is required by Article 3 (see *Paposhvili v. Belgium* [GC], no. 41738/10, § 184, 13 December 2016). While it will be for this Court, in the final instance, to determine whether, through the actions or failings on the part of the State, an individual has been denied the protection of that provision, it is appropriate to emphasise that the international machinery set up under the Convention is subsidiary to the protection of human rights that must be secured primarily at the national level (see, *mutatis mutandis*, *F.G. v. Sweden*, cited above, §§ 117-18, and *J.K. and Others v. Sweden* [GC], no. 59166/12, § 84, 23 August 2016). Moreover, it is not the role of the Court to substitute itself for the domestic authorities in the exercise of their right to control the entry, residence and expulsion of aliens.

303. In any event, the Court would make clear that the above approach is without prejudice to any obligations that may be incumbent on the Contracting States under relevant international law or, where applicable, under EU law, in particular those relating to the right to asylum (see paragraph 175 above; see also paragraph 291 above), a right which is not enshrined in the Convention or in its Protocols (see, among other authorities, *Ilias and Ahmed*, § 125, and *N.D. and N.T. v. Spain*, § 188, both cited above).

(b) Application of the above approach in the present case

(i) Admissibility

304. The Court considers that the applicants' complaints under Article 3 of the Convention raise complex issues of law and fact, the determination of which requires an examination of the merits. It follows that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

(ii) Merits

305. The applicants complained that on the six occasions when they had been removed to Belarus (on 31 March and 1, 2, 4, 6 and 9 April 2022), the Lithuanian authorities had not conducted any assessment of either the well-known general risks of *refoulement* faced by asylum-seekers in Belarus or the applicants' individual situations (see paragraphs 230 and 231 above). They further submitted that the removals had exposed them to a real risk of ill-treatment in Belarus, as well as to a real risk to life and limb as a result of their having to stay in the forest in cold weather and without sufficient food, water or medication (see paragraph 232 above).

306. The Court observes that on each occasion when the applicants were apprehended, the Lithuanian border guards established their identity and country of origin (see paragraphs 49, 51, 53, 55, 57 and 80 above). It takes note of the Government's submissions that, at the material time, domestic law provided for the possibility for aliens who had crossed the border illegally to be admitted to Lithuanian territory on humanitarian grounds, including on account of their vulnerability (see 257 above). However, none of the applicants presented any evident personal vulnerabilities and therefore did not come within the first category that the Court has specified above (see paragraph 299 above).

307. Moreover, before each removal, they spent between fifty minutes and several hours (see paragraphs 49, 51, 53, 55 and 57 above) – and on one occasion, overnight (see paragraphs 80 and 83 above) – with the border authorities. Given the circumstances, the Court is of the view that during that time the applicants had the possibility of making the claim, and presenting such evidence as they had in support of it, that removal to Belarus would

evidently expose them to a real and immediate threat to life or a real and immediate risk of severe ill-treatment (see paragraph 299 above). However, the applicants did not allege that they had done so on any of those occasions.

308. The applicants submitted that, on each occasion when they were apprehended in Lithuania, they had expressed a wish to seek asylum (see paragraph 223 above), a submission that was disputed by the Government (see paragraphs 248-251 above). Be that as it may, the Court reiterates that in the specific context of instrumentalised migration the Lithuanian authorities were not required to examine the asylum system in Belarus before removing the applicants to that State (see paragraph 298 above). Furthermore, even assuming that the applicants did indeed express the wish to seek asylum, the Court does not consider that this can be taken as prima facie evidence for the claim that summary removal to Belarus would evidently expose them to a real and immediate threat to life or a real and immediate risk of ill-treatment reaching the requisite level of severity for the purposes of Article 3 of the Convention (see paragraph 299 above). This issue is therefore immaterial to the Court's assessment of whether the Lithuanian authorities complied with their obligations under that provision in the present case.

309. Accordingly, the Court concludes that, in the absence of grounds on which to detect the applicants as coming within either of the categories set out above, their removal to Belarus on 31 March and 1, 2, 4, 6 and 9 April 2022 was not contrary to Article 3 of the Convention. It follows that there has been no violation of that provision.

3. Alleged violation of Article 4 of Protocol No. 4 to the Convention

310. The Court reiterates that the aim of Article 4 of Protocol No. 4 is to maintain the possibility, for each of the aliens concerned, to assert a risk of treatment which is incompatible with the Convention – and in particular with Article 3 – in the event of his or her return and, for the authorities, to avoid exposing to such a risk anyone who may have an arguable claim to that effect (see *N.D. and N.T. v. Spain*, cited above, § 198, and the cases cited therein).

311. In the present case, the Court has primarily examined the applicants' complaints about their summary removals to Belarus under Article 3 of the Convention, given the fundamental and absolute nature of the guarantee enshrined in this provision (see paragraph 296 above). Having clarified the interpretation of Article 3 in the context of instrumentalised migration, the Court considers that the State's obligations under Article 4 of Protocol No. 4 do not, in the present and specific context, go beyond what is required by Article 3 of the Convention (see paragraphs 299 and 301 above).

312. Accordingly, having regard to its findings under Article 3 of the Convention, the Court considers that it has examined the main legal question arising from the applicants' complaints concerning their summary removals to Belarus under that provision (see paragraphs 305-309 above). It therefore does not consider it necessary to examine separately the admissibility and

merits of the applicants' complaints under Article 4 of Protocol No. 4 to the Convention.

4. Alleged violation of Article 13 of the Convention taken in conjunction with Article 3 of the Convention and with Article 4 of Protocol No. 4

313. Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured. The effect of that provision is thus to require the availability of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief (see *N.D. and N.T. v. Spain*, cited above, § 240).

314. The core of the applicants' complaint under Article 13 of the Convention taken in conjunction with Article 3 of the Convention and with Article 4 of Protocol No. 4 was that a remedy capable of automatically suspending their removal to Belarus had not been available to them (see paragraph 238 above).

315. When examining the applicants' complaint under Article 3 of the Convention, the Court did not detect any grounds that should have prevented the summary removal of the applicants to Belarus (see paragraph 309 above). In view of the reasons underlying that conclusion, it finds that the applicants' complaint under Article 3 could not be considered "arguable". It follows that their related complaint under Article 13 of the Convention taken in conjunction with Article 3 is incompatible *ratione materiae* with the provisions of the Convention. It must therefore be declared inadmissible, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

316. Lastly, having found that in the present case it is not necessary to examine separately the admissibility and merits of the applicants' complaints under Article 4 of Protocol No. 4 to the Convention (see paragraphs 310-312 above), it follows that it is likewise unnecessary to examine their complaints under Article 13 of the Convention taken in conjunction with that provision.

III. ALLEGED VIOLATIONS OF THE CONVENTION ON ACCOUNT OF THE APPLICANTS' DEPRIVATION OF LIBERTY

317. The applicants complained that they had been deprived of their liberty without being informed of the reasons and without the possibility of complaining to any national authorities. They relied on Article 5 §§ 1, 2 and 4 of the Convention, the relevant parts of which read as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

...

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

..."

A. The period under consideration

318. The applicants were apprehended by the Lithuanian border guards on 13 April 2022 (see paragraph 95 above). They were held at a border post until 15 April 2022, when they were transferred to Medininkai FRC (see paragraph 108 above). In the Grand Chamber proceedings, the applicants submitted that they were complaining about the period of their detention from 13 April to 18 October 2022. However, they did not provide any information about the restrictions on their freedom of movement which had been applicable to them from 13 to 15 April 2022. Accordingly, the Court considers that any complaints regarding the period from 13 to 15 April 2022 are unsubstantiated and that the period which it is called to assess in the present case is 15 April to 18 October 2022.

B. Applicability of Article 5 of the Convention

1. The parties' submissions

(a) The applicants

319. The applicants submitted that the nature and degree of the restrictions imposed on them during their "temporary accommodation without the freedom of movement" had clearly amounted to detention within the meaning of Article 5 of the Convention. They referred to a report by the CPT (see paragraph 201 above), which described the restrictions on the aliens' freedom of movement in the Medininkai FRC and concluded that it amounted to *de facto* detention. With regard to the Pabradė FRC, the applicants stated that, upon their arrival in that facility in August 2022, they had been accommodated in container housing, surrounded by high fences; they provided photographs to the Court. On 27 September 2022 they had been transferred to dormitories within the facility (see paragraph 112 above). However, during both those periods they had not been permitted to leave the facility and had had only limited freedom of movement inside it.

320. The fact that "temporary accommodation" under the Aliens Act amounted to *de facto* detention was further supported by the decisions issued by the CJEU (see paragraph 184 above) and the Supreme Administrative Court (see paragraph 169 above).

321. In addition, the applicants referred to the criteria for the applicability of Article 5 to restrictions on aliens' liberty, established by the Court in *Ilias and Ahmed* (cited above, §§ 217-18). They invited the Court to clarify the applicability of those criteria, particularly the reference to the applicants' own "choice", in the context of asylum-seekers. They also submitted that the present case should be distinguished from *Ilias and Ahmed*, in view of the fact that the applicants had not been confined in a transit zone, there had been insufficient procedural safeguards against an excessive length of detention, and the applicants had been detained for six months, which was considerably longer than the applicants in *Ilias and Ahmed*.

(b) The Government

322. The Government submitted that, although according to the Aliens Act, temporary accommodation of aliens without the right to freedom of movement was not considered detention, the Supreme Administrative Court had acknowledged that that measure could amount to *de facto* detention, in view of the lengthy separation from others and the restrictions on one's freedom of movement (see paragraph 169 above).

2. Third-party submissions by the Seimas *Ombudspersons' Office, the Human Rights Monitoring Institute, the Lithuanian Red Cross and Médecins sans Frontières*

323. The *Seimas* Ombudspersons' Office and the Human Rights Monitoring Institute submitted that the "temporary accommodation without the freedom of movement" of migrants in various reception facilities, under Article 140^8 § 3 of the Aliens Act, as in force at the material time (see paragraph 145 above), amounted to *de facto* detention, in view of the restrictions applicable to the individuals accommodated in those facilities. Médecins sans Frontières also referred to that measure as detention.

324. The *Seimas* Ombudspersons' Office and the Lithuanian Red Cross both provided a description of Medininkai FRC (which had since been closed), whereas the Lithuanian Red Cross also provided a description of Pabradė FRC (which remained open):

(a) Medininkai FRC was located approximately 1.7 km from the territory of Belarus and was not adjacent to any border crossing point. It had a surface area of around 3,000 sq. m and comprised 200 container homes, each measuring about 13.5 sq. m. The area was divided into five sectors. Each sector was fenced and had a locked gate, and the residents were allowed to leave the sector only for a specific purpose and under the supervision of an

officer. There was also a dormitory (a training school of the SBGS), where some people were placed; their freedom of movement was limited to a particular floor.

(b) Pabradė FRC was located approximately 8.6 km from the territory of Belarus and was not adjacent to any border crossing point. It consisted of permanent buildings, and there used to be an area of container housing, which had since been dismantled. The latter had a surface area of around 6,500 sq. m, divided into five sectors, with the layout and restrictions similar to those in Medininkai FRC.

3. The Court's assessment

(a) General principles

325. In proclaiming the "right to liberty", Article 5 § 1 of the Convention contemplates the physical liberty of the person. Accordingly, it is not concerned with mere restrictions on liberty of movement, which are governed by Article 2 of Protocol No. 4. In order to determine whether someone has been "deprived of his liberty" within the meaning of Article 5, the starting point must be his or her specific situation and account must be taken of a whole range of factors such as the type, duration, effects and manner of implementation of the measure in question. The difference between deprivation and restriction of liberty is one of degree or intensity, and not one of nature or substance (see, among many other authorities, *Medvedyev and Others v. France* [GC], no. 3394/03, § 73, ECHR 2010, and *Austin and Others v. the United Kingdom* [GC], nos. 39692/09 and 2 others, § 57, ECHR 2012).

326. In determining the distinction between a restriction on freedom of movement and deprivation of liberty in the context of confinement of foreigners in transit zones and reception centres for the identification and registration of migrants, the Court has set out specific factors to be taken into account. They may be summarised as follows: (i) the applicants' individual situation and their choices; (ii) the applicable legal regime of the respective country and its purpose; (iii) the relevant duration, especially in the light of the purpose and the procedural protection enjoyed by the applicants pending the events; and (iv) the nature and degree of the actual restrictions imposed on or experienced by the applicants (see *Z.A. and Others v. Russia*, § 138, and *Ilias and Ahmed*, §§ 217-18, both cited above).

(b) Application of the above principles in the present case

327. The Court observes that, at the material time, Article 140^8 § 3 of the Aliens Act provided that aliens who had lodged asylum applications at border crossing points or in transit zones were to be temporarily accommodated at the relevant facilities of the SBGS without the right to freedom of movement

on Lithuanian territory, that is to say without the right to leave those facilities (see paragraph 145 above). Temporary accommodation of aliens without the right to freedom of movement was distinct from detention, which was regulated under Article 140^{17} of the Aliens Act (see paragraph 148 above).

328. However, the domestic courts eventually acknowledged that the temporary accommodation of aliens without the right to freedom of movement, as provided for in Article 140^{8} § 3 of the Aliens Act, in fact constituted a deprivation of liberty under domestic law (see paragraphs 158 and 169 above). The same conclusion was also reached by the CJEU with regard to EU law (see paragraph 184 above). Various other bodies, such as UNHCR, also considered that measure to amount to *de facto* detention (see paragraph 195 above).

329. Nor did the Government dispute that temporary accommodation under Article 140^{8} § 3 of the Aliens Act could amount to detention within the meaning of Article 5 of the Convention (see paragraph 322 above).

330. The Court sees no reason to reach a different conclusion (see, *mutatis mutandis*, *A.D. v. Malta*, no. 12427/22, § 148, 17 October 2023). It notes, in particular, that the two facilities in question – Medininkai FRC and Pabradė FRC – were closed, fenced and under the continuous surveillance of the security forces and that the persons accommodated there were confined to them (see the description of those facilities in paragraphs 201 and 324 above). As submitted by the applicants and several third-party interveners, and not disputed by the Government, while staying in those facilities, the applicants had not been permitted to leave them and had only had limited freedom of movement inside them (see paragraphs 319 and 324 above). Accordingly, their freedom of movement was severely restricted, in a manner similar to the restriction applied in a certain type of light-regime detention facility (see, *mutatis mutandis*, *R.R. and Others v. Hungary*, no. 36037/17, § 82, 2 March 2021).

331. In the light of the foregoing, the Court finds that the applicants were deprived of their liberty from 15 April to 18 October 2022 and that Article 5 of the Convention is therefore applicable in respect of that period.

332. Having reached that conclusion, the Court considers that it is not necessary to address the applicants' remaining arguments concerning the applicability of Article 5 (see paragraph 321 above).

C. Immigration detention in the context of instrumentalisation of migration

333. The Court reiterates that the present case has arisen in a specific and novel context – instrumentalisation of migration by Belarus – which distinguishes it from cases that the Court has examined in the past (see paragraphs 283-292 above). It recognises the importance, for a Contracting State targeted by instrumentalised migration, of exercising its right to control

the liberty of aliens in an immigration context, which is the necessary adjunct to the States' undeniable sovereign right to control aliens' entry into and residence in their territory (see paragraph 388 below). In particular, the Court is mindful that, when seeking to manage the difficulties created by instrumentalisation of migration by another State, the Contracting State's authorities may have a stronger interest than in other circumstances in controlling the liberty of aliens who have unlawfully entered their national territory. That is particularly true in cases such as the present one, where the respondent State is also a member of the European Union and part of the Schengen Area, as the fact of permitting third-country nationals to be at liberty within the national territory would allow them to move within the entire Schengen Area (see also paragraph 291 above).

334. Moreover, the Court is fully conscious of the difficulties that the Contracting States may face during periods of mass arrivals of asylum-seekers and migrants at their borders (see paragraph 387 below). It reiterates that Article 5 § 1 (f) of the Convention does not preclude the detention of asylum-seekers (see paragraphs 388 and 389 below). However, Article 5 provides for certain minimum guarantees to anyone deprived of his or her liberty. In particular, in accordance with the Court's established case-law, any deprivation of liberty must be lawful and devoid of arbitrariness (see paragraphs 386-389 below).

335. The Court further notes that in the present case the respondent Government have not argued that the specific and novel context of instrumentalisation of migration constitutes grounds for the Court to depart from the existing principles established in its case-law under Article 5 of the Convention (see the Government's submissions in paragraphs 341-344, 358, 359 and 384 below). Nor were any such arguments made by the respondent Government in the case of *H.M.M. and Others v. Latvia* (cited above), which also concerned immigration detention in a context of instrumentalisation of migration (ibid., § 576). Instead, those Governments have invited the Court to follow the principles which it has established in cases concerning a mass influx of irregular migrants.

336. In the light of the foregoing considerations, the Court is of the view that the principles which it has established in cases concerning immigration detention, including those relating to situations of a mass influx of aliens, and which enshrine the minimum guarantees that need to be provided to detained individuals, remain relevant in situations of instrumentalisation of migration by another State and the Contracting States remain bound by their obligations under Article 5 of the Convention, as summarised in paragraphs 346, 347, 362 and 386-389 below.

D. Alleged violation of Article 5 § 2 of the Convention

1. Admissibility

337. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

2. Merits

(a) The parties' submissions

(i) The applicants

338. The applicants submitted that they had never been informed of the reasons for their detention. The only documents provided to them had been the certificates of receipt of their asylum applications, which had been issued in Lithuanian and had not referred to any legal provisions nor explicitly mentioned the limitations on their freedoms (see paragraph 101 above).

339. After arriving in the Medininkai FRC, the applicants were told only that they could not leave the centre. They were asked to sign a document, entitled "Rights and Responsibilities of Foreigners" and an accompanying information sheet (see paragraph 108 above). The latter document was complex, generic, provided only in English, and the applicants were not given a copy after signing. On 22 April 2022 each applicant was interviewed separately in relation to the criminal proceedings initiated against them for illegal border crossing (see paragraph 102 above); at that time, they were again told that they were being detained and could not leave the centre without authorisation. After arriving in the Pabradė FRC, they were not provided with any information regarding their status and were only told that they could not leave the centre.

340. The applicants submitted that the lack of information provided to them was demonstrated by the various written requests which they had sent to the authorities, asking for information (see paragraph 110 above), and which had not been meaningfully answered.

(ii) The Government

341. The Government submitted that the applicants had been provided with certificates of receipt of their asylum applications, issued by the Migration Department, which had indicated that the question of their admission to Lithuania was not being decided and that they had not been admitted to Lithuania (see paragraph 101 above). Thus, they had been officially informed about the decisions taken in their regard.

342. Moreover, all asylum-seekers temporarily accommodated at SBGS facilities were informed of the conditions and regime to which they were

subject (see paragraph 156 above). It was possible to seek further information or clarifications from SBGS officers or the Migration Department, either through the official responsible for examining the asylum application or through general channels.

343. In addition, information regarding the legal status of aliens was made publicly available on the premises of the aliens' reception facilities in several languages, including English, which the applicants understood. The staff of the facility could also provide the necessary information orally and when addressing complaints and requests submitted to the administration through a mailbox installed for that purpose. Interpreting had been provided by interpreters from the European Union Agency for Asylum. Thus, the Government submitted that all asylum-seekers, in particular those who were represented by local NGOs or professional lawyers, were "perfectly aware" that the applicable restrictions were limited in time.

344. The Government acknowledged that, at the initial stage of the influx of migrants, there had been certain shortcomings in providing them with information. However, the Migration Department had made a continuous effort to increase the availability of information to aliens, in cooperation with, among others, the Lithuanian Red Cross, by distributing written leaflets in various languages in the reception facilities and publishing the relevant information online. There had also been several NGOs providing humanitarian assistance and legal consultations in the reception facilities. The applicants had arrived in Lithuania in the spring of 2022, that is after the initial influx of aliens, which had started in April 2021, and by that time, the availability of information had significantly improved.

(b) Third-party submissions by the *Seimas* Ombudspersons' Office, the Human Rights Monitoring Institute and Médecins sans Frontières

345. The interveners submitted that aliens placed in the reception centres were not provided with sufficient information about their rights and legal status, the grounds and length of detention, or the available avenues of complaint. The *Seimas* Ombudspersons' Office, having visited the Medininkai FRC in May and June 2022 and having examined the document containing information on the aliens' rights and responsibilities (see paragraph 156 above), found that its English and Arabic versions had been drafted in very complex and somewhat inaccurate language, making it relatively difficult to understand.

(c) The Court's assessment

(i) General principles

346. The Court reiterates that, under Article 5 § 2 of the Convention, any person who has been arrested must be told, in simple, non-technical language that he or she can understand, the essential legal and factual grounds for his

or her deprivation of liberty, so as to be able to apply to a court to challenge its lawfulness in accordance with Article 5 § 4. Whilst this information must be conveyed "promptly", it need not be given in its entirety by the arresting officer at the very moment of the arrest. Whether the content and promptness of the information conveyed were sufficient is to be assessed in each case according to its special features (see *Khlaifia and Others*, cited above, § 115, and the cases cited therein).

347. The Court further reiterates that information about the legal status of a migrant or about the possible removal measures that could be implemented cannot satisfy the need for information as to the legal basis for the migrant's deprivation of liberty (ibid., § 118).

(ii) Application of the above principles in the present case

348. At the outset, the Court observes that the fact that the applicants were not provided with a written decision to deprive them of their liberty cannot be disputed because such a decision was never adopted. Indeed, at the material time, Article 140^8 § 3 of the Aliens Act provided that aliens who had lodged asylum applications at the border were to be temporarily accommodated without the right to freedom of movement, and the law did not require that a decision be adopted in respect of each individual concerned (see paragraph 145 above; see also the Constitutional Court's ruling in paragraphs 157-164 above and the later amendments to the Aliens Act in paragraph 153 above).

349. The Court has no reason to doubt that the applicants must have been aware that they had entered Lithuania illegally and that their detention was somehow related to that illegal entry (see, *mutatis mutandis*, *Khlaifia and Others*, cited above, § 118). However, it emphasises that this in itself does not relieve the State of its obligation under Article 5 § 2 of the Convention to provide individuals with the essential legal and factual grounds for their deprivation of liberty, so as to enable them to apply to a court to challenge its lawfulness in accordance with Article 5 § 4 (ibid., §§ 115-22). In particular, and as reiterated above, information about the legal status of a migrant or about the possible removal measures that could be implemented cannot satisfy the need for information as to the legal basis for the migrant's deprivation of liberty (ibid., § 118).

350. Shortly before their transfer to Medininkai FRC, the applicants were provided with certificates issued by the Migration Department stating that their asylum applications had been accepted for examination and that they had not been admitted to Lithuania (see paragraph 101 above). The applicants submitted that those certificates had only been issued in Lithuanian (see paragraph 338 above), and there is no indication in any of the material in the Court's possession that they were translated into a language which the applicants could understand. Be that as it may, those documents did not contain any references to the applicants' deprivation of liberty, its legal basis

or the available avenues of appeal. Thus, they did not meet the requirements of Article 5 § 2 of the Convention.

351. On their arrival at Medininkai FRC, the applicants were provided with information leaflets, in English, on the rights and responsibilities of aliens during their stay there (see paragraph 108 above). However, according to those leaflets, that facility accommodated several different categories of aliens, including detained aliens, detained asylum-seekers, and non-detained asylum-seekers (see paragraph 156 above), and there is no indication that it was explained to the applicants to which category they belonged or what the factual and legal grounds were for placing them in that category (compare and contrast *Čonka v. Belgium*, no. 51564/99, §§ 51-52, ECHR 2002-I). Accordingly, the Court cannot accept that the information contained in the leaflets satisfied the requirements of Article 5 § 2 of the Convention either (see *J.R. and Others v. Greece*, no. 22696/16, §§ 123-24, 25 January 2018; see also the third-party submissions in this respect in paragraph 345 above).

352. The Government further contended that the applicants could themselves have sought additional information from the staff of the accommodation centres, the officials of the SBGS or the Migration Department, lawyers, volunteers or NGOs (see paragraphs 342-344 above). However, the Court considers that the right to be promptly informed of the reasons for one's arrest would not be practical and effective if the authorities were allowed to remain passive and leave it entirely to the individual to seek out that information (see, *mutatis mutandis*, *Shamayev and Others v. Georgia and Russia*, no. 36378/02, § 425, ECHR 2005-III). Nor can the Court accept that the obligation to inform an individual of the reasons for his or her arrest can be transferred entirely to private parties, such as lawyers, volunteers or NGOs. It reiterates that the obligation to inform under Article 5 § 2 of the Convention rests with the national authorities (see *Malofeyeva v. Russia*, no. 36673/04, § 70, 30 May 2013, and *Vakhitov and Others v. Russia*, nos. 18232/11 and 2 others, § 62, 31 January 2017; see also Article 9(4) of the Reception Conditions Directive, cited in paragraph 181 above).

353. In any event, the Court is not persuaded that, in the present case, the applicants had an actual opportunity to promptly obtain information about the reasons for their deprivation of liberty from the relevant officials. In the material provided to the Court, there is no indication that any officials of the Migration Department or the SBGS met with the applicants during their stay at Medininkai FRC (in this connection, see the applicants' complaint to the authorities in paragraph 110 above). It appears that the first time at least some of the applicants met with an officer of the SBGS was on 1 September 2022, after they had been transferred to Pabradė FRC (see paragraph 114 above). Even assuming that they could have obtained the relevant information during that meeting, the Court notes that the meeting took place more than four months after the applicants had been deprived of their liberty. It therefore clearly did not meet the requirement of "promptness" under Article 5 § 2 of

the Convention (see *Shamayev and Others*, cited above, § 416, and *Saadi v. the United Kingdom* [GC], no. 13229/03, § 84, ECHR 2008, where the Court found delays of, respectively, four days and seventy-six hours incompatible with the requirement of "promptness" under that provision).

354. The foregoing considerations lead the Court to conclude that the applicants were not promptly informed of the reasons for their deprivation of liberty. There has accordingly been a violation of Article 5 § 2 of the Convention.

E. Alleged violation of Article 5 § 4 of the Convention

1. Admissibility

355. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

2. Merits

(a) The parties' submissions

(i) The applicants

356. The applicants submitted that, at the material time, the Aliens Act did not provide for a right of appeal against placement in temporary accommodation without the right to freedom of movement (see paragraph 147 above). That legislation had been amended only in April 2023 (see paragraph 154 above), confirming that no right to appeal had existed before the amendment. In any event, even if such a right had been provided for, it would have been illusory, since the applicants had not been informed of the reasons for the measure and had had no access to legal assistance to pursue any such appeal.

357. They submitted that they had not been entitled to State-guaranteed legal aid to appeal against their detention because such aid was only provided to aliens who had received formal decisions regarding restrictions on their freedom of movement. They further contended that, in any event, the State-guaranteed legal aid provided to aliens in the period 2021-22 had been completely ineffective, as confirmed by various reputable sources (see paragraphs 360 and 361 below).

(ii) The Government

358. The Government submitted that the applicants had had an opportunity to lodge a complaint about their deprivation of liberty with the administrative courts. At the time the applicants had been accommodated without the right to freedom of movement, there was already well-established

case-law of the Supreme Administrative Court expressly acknowledging the right of access of aliens to a court in order to examine whether that measure was justified, and the courts assessed the necessity and proportionality of the restrictions on aliens' freedom of movement, taking due account of the individual's vulnerability, whether he or she posed a threat to public order, the duration of the measure, the individual's conduct, and other relevant circumstances (the Government relied on, among others, the decisions of the Supreme Administrative Court summarised in paragraphs 165-167 and 169 above). The accessibility of that remedy had been improved by an overview of the relevant domestic case-law in English prepared by the Lithuanian Red Cross (the Government referred to a review published on the website of the Lithuanian Red Cross in May 2022, which contained summaries of five decisions relating to aliens' freedom of movement adopted by the courts between March and May 2022).

359. The Government further submitted that the applicants had had sufficient access to free legal aid to be able to avail themselves of the aforementioned remedy. They had been provided with free legal aid in the criminal proceedings instituted against them for illegally crossing the border (see paragraph 102 above). They had also been entitled to free legal aid in the asylum procedure but had opted not to use it – three of the four applicants had been represented by a lawyer of their choosing (see paragraph 118 above), while the third applicant, a lawyer herself, had not requested legal aid. Moreover, the applicants had been entitled to free legal aid in order to complain against their *de facto* detention and request an alternative measure (see paragraph 150 above). Lastly, the applicants had consulted volunteers of *Sienos Grupė*, who had been in a position to provide them with necessary advice and assistance in instituting domestic proceedings.

(b) Third-party submissions by the *Seimas* Ombudspersons' Office, the Human Rights Monitoring Institute, the Lithuanian Red Cross and Médecins sans Frontières

360. The interveners submitted that the aliens in the reception centres had not had adequate access to legal aid. The *Seimas* Ombudspersons' Office submitted that the provision of State-guaranteed legal aid to asylum-seekers at the material time had been completely ineffective. In the last quarter of 2021 and the first half of 2022, the *Seimas* Ombudspersons' Office had received dozens of inquiries from aliens accommodated in various facilities, asking for State-guaranteed legal aid and complaining that they had never seen the State-appointed lawyer. The intervener pointed out that the provider of legal aid to aliens was selected by the Migration Department in the procurement procedure; an interview with one such provider revealed that the lawyer often avoided appealing against the Migration Department's decisions for fear of losing the procurement contract.

361. In addition, the Lithuanian Red Cross submitted that its legal team, consisting of four lawyers, had regularly visited the aliens' reception facilities and provided legal consultations to their residents. In practice, those consultations had been limited to explaining the content of various procedural documents, providing advice on possible avenues for further action, and occasionally drafting requests in the aliens' names to the management of the facilities. The intervener submitted that no State-guaranteed legal aid had been available to people wishing to challenge their deprivation of liberty before a court. In May 2022, the Lithuanian Red Cross had started distributing prepared templates for challenging "temporary accommodation without freedom of movement" among the residents, so that they could lodge such appeals themselves, without representation. That had resulted in numerous court decisions lifting the restrictions on the freedom of movement. However, the intervener emphasised that the scale, scope and content of the legal assistance which it had provided to asylum-seekers at the material time should by no means be regarded as a proper substitute for State-guaranteed legal aid and that it had not normally included legal representation before the courts.

(c) The Court's assessment

(i) General principles

362. Article 5 § 4 of the Convention entitles detained persons to institute proceedings for a review of compliance with the procedural and substantive conditions which are essential for the "lawfulness", in Convention terms, of their deprivation of liberty. Article 5 § 4 does not guarantee a right to judicial review of such a scope as to empower the court, on all aspects of the case, including questions of pure expediency, to substitute its own discretion for that of the decision-making authority. However, the review should be wide enough to bear on those conditions which are essential for the "lawful" detention of a person in accordance with Article 5 § 1. The existence of the remedy must be sufficiently certain, not only in theory but also in practice, failing which it will lack the requisite accessibility and effectiveness (see *Khlaifia and Others*, cited above, §§ 128-30, and *N.M. v. Belgium*, no. 43966/19, §§ 128-29, 18 April 2023, and the cases cited therein). The requirement of procedural fairness under Article 5 § 4 does not impose a uniform, unvarying standard to be applied irrespective of the context, facts and circumstances. Although it is not always necessary that an Article 5 § 4 procedure be attended by the same guarantees as those required under Article 6 for criminal or civil litigation, it must have a judicial character and provide guarantees appropriate to the type of deprivation of liberty in question (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 203, ECHR 2009, and *Idalov v. Russia* [GC], no. 5826/03, § 161, 22 May 2012).

(ii) Application of the above principles in the present case

363. It is not in dispute that, at the material time, the Aliens Act did not explicitly provide for any possibility for aliens to appeal against their placement in temporary accommodation without freedom of movement (see paragraph 147 above). That possibility was recognised for the first time by the Supreme Administrative Court in a decision of 6 October 2021 (see paragraph 165 above) and it was reiterated in subsequent decisions taken by that court prior to the applicants' deprivation of liberty (see paragraph 166 above).

364. In cases where detainees had not been informed of the reasons for their deprivation of liberty, the Court has found that their right to appeal against it was deprived of all effective substance (see *Khlaifia and Others*, cited above, § 132, and the cases cited therein). Having regard to its conclusion under Article 5 § 2 of the Convention that the applicants were not promptly informed of the reasons for their deprivation of liberty (see paragraph 354 above), this would in principle suffice for the Court to find that the Lithuanian legal system did not provide them with a remedy whereby they could obtain a judicial decision on the lawfulness of their deprivation of liberty (ibid., § 133).

365. The Government nonetheless submitted that the applicants could have lodged a complaint with the administrative courts regarding the lawfulness of their deprivation of liberty with the help of legal assistance provided by State-guaranteed lawyers or NGOs (see paragraphs 358 and 359 above).

366. The Court considers that in the present case it has not been shown that the applicants had effective access to State-guaranteed legal assistance for the purpose of lodging a complaint about their deprivation of liberty. It observes that domestic law entitled aliens to receive State-guaranteed legal aid in connection with the examination of their asylum applications (see paragraphs 124 and 143 above) and in cases where they had been detained within the meaning of the Aliens Act (see paragraphs 130 and 150 above). However, the Government have not indicated any domestic legal provision which may have also entitled the applicants to receive such aid in order to challenge the lawfulness of their temporary accommodation under Article 140^8 § 3 of that Act.

367. Accordingly, in the circumstances of the present case, where the applicants were not informed of the reasons for their detention and domestic law did not explicitly provide for a possibility to appeal against the measure to which they were subjected, the Court finds that they did not have a practical and effective possibility of challenging its lawfulness.

368. There has therefore been a violation of Article 5 § 4 of the Convention.

F. Alleged violation of Article 5 § 1 of the Convention

1. Admissibility

(a) The parties' submissions

(i) The Government

369. The Government submitted that the applicants had failed to exhaust the effective domestic remedies in respect of their complaint under Article 5 § 1 of the Convention.

370. Firstly, the applicants could have lodged a complaint about their deprivation of liberty with the administrative courts (see paragraph 358 above).

371. Secondly, the applicants' confinement in temporary accommodation without the right to freedom of movement had been predetermined by the length of time taken to examine their asylum applications. Accordingly, they could have lodged a claim against the State requesting compensation for the protracted length of the asylum procedure. The Government referred to a decision of the Supreme Administrative Court, taken in February 2023, where that court had acknowledged that the failure by the Migration Department to examine the claimant's asylum application within the time-limits established by law had violated her rights and held that the acknowledgment of the violation constituted sufficient just satisfaction.

372. Thirdly, the applicants had had the possibility of lodging an individual complaint with the Constitutional Court challenging the legal basis of their detention. According to domestic law, when the Constitutional Court, having examined an individual complaint, declared a legal provision to be contrary to the Constitution, the proceedings in respect of the person who lodged that complaint had to be reopened, in order to protect his or her constitutional rights. Moreover, such a provision was removed from the legal system and could no longer be applied. The Government pointed out that a complaint lodged by another asylum-seeker, challenging the relevant provisions of the Aliens Act, had been examined by the Constitutional Court and had resulted in the impugned legal provisions being declared unconstitutional (see paragraphs 157-164 above). They also stated that, after that ruling of the Constitutional Court, the applicants could have sought compensation for the violations of their rights which had resulted from a legal provision that was subsequently declared unconstitutional.

(ii) The applicants

373. In response to the Government's objection, the applicants reiterated the arguments which they had raised under Article 5 § 4 of the Convention (see paragraphs 356 and 357 above) and contended that the domestic

remedies indicated by the Government had not been accessible to them because of a lack of effective legal assistance.

(b) The Court's assessment

374. The Court firstly turns to the Government's arguments regarding the possibility of lodging a complaint about the deprivation of liberty with the administrative courts. It observes that it has already addressed the availability of that remedy to the applicants when examining their complaint under Article 5 § 4 of the Convention. In view of its findings under that provision (see paragraphs 363-368 above), the Court finds that the remedy in question cannot be considered accessible and effective in practice in the circumstances of the present case.

375. Turning next to the other remedies suggested by the Government (see paragraphs 371 and 372 above), the Court reiterates that the requirement for an applicant to exhaust domestic remedies is normally determined with reference to the date on which the application was lodged with the Court (see *Baumann v. France*, no. 33592/96, § 47, ECHR 2001-V (extracts)). In the present case, the application form which contained the applicants' complaints under Article 5 of the Convention was lodged with the Court on 30 July 2022, while they were still deprived of their liberty. For a remedy in respect of the lawfulness of an ongoing deprivation of liberty to be effective, it must offer a prospect of release. In other words, a remedy that does not afford a possibility of release cannot be regarded as an effective remedy for the purposes of Article 5 of the Convention while the deprivation of liberty is ongoing (see *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, § 207, 22 December 2020). The Government did not suggest that lodging a claim for compensation for the protracted length of the asylum procedure or an individual complaint with the Constitutional Court could have led to the applicants' release. Accordingly, those remedies cannot be considered effective in the present case.

376. It follows that the Government's objection regarding exhaustion of domestic remedies must be dismissed.

377. The Court further notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

2. Merits

(a) The parties' submissions

(i) The applicants

378. The applicants submitted that their detention had not been in compliance with a procedure prescribed by law or with the requirements of

Article 5 § 1 (f) of the Convention. Lithuanian law had provided for an "across-the-board detention policy", taking no account of personal circumstances, as had been ultimately confirmed by the Constitutional Court (see paragraphs 157-164 above).

379. They submitted that the domestic legal regime at the material time had not provided the "form of the order", contrary to the requirements established in the Court's case-law (see *Z.A. and Others v. Russia*, cited above, § 162). The Aliens Act had permitted "accommodation without freedom of movement" for up to six months without a court decision or any other written decision assessing the applicants' individual circumstances. Furthermore, no written decision regarding their detention had ever been provided to the applicants.

380. The applicants further submitted that even though the Aliens Act provided for the maximum duration of the confinement, that duration had never been communicated to them. Moreover, according to the Aliens Act, asylum applications examined under the accelerated procedure had to be examined within ten working days (see paragraph 135 above), but in their case that time-limit had been significantly exceeded (see paragraph 119 above).

381. Furthermore, at the material time, the law had not provided for any avenue of appeal (see paragraphs 147 and 154 above).

382. In addition, the applicants contended that their detention had not been in good faith and therefore had been arbitrary, given that the length of the detention had exceeded "that reasonably required for the purpose pursued". They submitted that the accelerated procedure had been applied in their case in order to avoid the 48-hour time-limit, under Article 140^8 § 2 of the Aliens Act, for a decision on admission of an asylum-seeker to Lithuania (see paragraph 144 above). The fact that they had eventually been granted asylum showed that the information which they had provided in support of their asylum applications had not been inconsistent, contradictory or misleading, or had not otherwise fallen within the grounds listed in Article 76 § 4 of the Aliens Act so as to justify the accelerated procedure (see paragraph 134 above). Accordingly, they contended that the six-month detention had not been connected to the purpose of examining the asylum applications.

383. Lastly, they submitted that the conditions of their detention had been poor and not appropriate for accommodating asylum-seekers, thereby also rendering their detention arbitrary.

(ii) The Government

384. The Government submitted that the applicants' temporary accommodation without the right to freedom of movement had been directly related to the determination of their legal status in Lithuania, in line with the purpose of Article 5 § 1 (f) of the Convention. The domestic legislation

specified the maximum duration of such accommodation and the applicants had benefited from those safeguards – when their asylum applications had not been examined within six months, they had been granted freedom of movement (see paragraph 116 above). Therefore, the applicants' deprivation of liberty had been in line with Article 5 § 1 (f) of the Convention.

(b) Third-party submissions by the AIRE Centre, ECRE, DCR, ICJ and IRAP (acting jointly), UNHCR, and the UN Working Groups and Special Rapporteurs (acting jointly)

385. The interveners submitted that detention of refugees and asylum-seekers must only be used as a measure of last resort, that it must be necessary and subject to a review of its purpose, reasonableness and proportionality. UNHCR submitted that the policy of *de facto* generalised detention of asylum-seekers for prolonged periods of time, as adopted by Lithuania, did not meet the requisite standards of lawfulness and protection against arbitrariness, which remained valid even in situations of "instrumentalisation".

(c) The Court's assessment

(i) General principles

(α) The requirement of "lawfulness" under Article 5 § 1 of the Convention

386. The Court reiterates that any deprivation of liberty must, in addition to falling within one of the exceptions set out in sub-paragraphs (a) to (f) of Article 5 § 1 of the Convention, be "lawful". Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of that law, but it requires in addition that any deprivation of liberty should be in keeping with the purpose of Article 5, namely, to protect the individual from arbitrariness. In laying down that any deprivation of liberty must be effected "in accordance with a procedure prescribed by law", Article 5 § 1 primarily requires any arrest or detention to have a legal basis in domestic law. However, these words do not merely refer back to domestic law. They also relate to the quality of the law, requiring it to be compatible with the rule of law, a concept inherent in all Articles of the Convention (see *Khlaifia and Others*, cited above, § 91, and the cases cited therein).

387. The Court is fully conscious of the difficulties that Contracting States may face during periods of mass arrivals of asylum-seekers at their borders. Subject to the prohibition of arbitrariness, the lawfulness requirement of that provision may be considered generally satisfied by a domestic legal regime that provides, for example, for no more than the name of the authority competent to order deprivation of liberty, the form of the order, its possible grounds and limits, the maximum duration of the confinement and, as

required by Article 5 § 4, the applicable avenue of judicial appeal (see *Z.A. and Others v. Russia*, cited above, § 162).

(β) Detention "to prevent unauthorised entry into the country" under Article 5 § 1 (f) of the Convention

388. While the general rule set out in Article 5 § 1 of the Convention is that everyone has the right to liberty, Article 5 § 1 (f) provides an exception to that general rule, permitting States to control the liberty of aliens in an immigration context. As the Court has remarked before, subject to their obligations under the Convention, States enjoy an "undeniable sovereign right to control aliens' entry into and residence in their territory". It is a necessary adjunct to this right that States are permitted to detain would-be immigrants who have applied for permission to enter, whether by way of asylum or not. Depriving asylum-seekers of their liberty to prevent their unauthorised entry into a State's territory is not in itself in contravention of the Convention (see *Saadi v. the United Kingdom*, § 64, and *Z.A. and Others v. Russia*, § 160, both cited above).

389. Article 5 § 1 (f) does not require the detention of a person to prevent his or her effecting an unauthorised entry into the country to be reasonably considered necessary, for example, to prevent the individual from committing an offence or fleeing (see *Khlaifia and Others*, cited above, § 90). However, any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness (see *Saadi v. the United Kingdom*, cited above, § 67). To avoid being branded as arbitrary, detention under the first limb of Article 5 § 1 (f) must be carried out in good faith; it must be closely connected to the purpose of preventing unauthorised entry of the person to the country; the place and conditions of detention should be appropriate, bearing in mind that the measure is applicable not to those who have committed criminal offences but to aliens who, often fearing for their lives, have fled from their own country; and the length of the detention should not exceed that reasonably required for the purpose pursued (ibid., § 74).

(ii) Application of the above principles in the present case

390. The Court has found that the applicants were deprived of their liberty from 15 April to 18 October 2022 (see paragraph 331 above).

391. It is not in dispute between the parties that the applicants entered Lithuania illegally and that, during the period at issue, they were not formally admitted to Lithuanian territory while their asylum applications were being examined. Accordingly, the Court is satisfied that the applicants' detention sought to prevent their effecting an unauthorised entry into the country, thereby falling under the first limb of Article 5 § 1 (f) of the Convention (see *Saadi v. the United Kingdom*, cited above, §§ 64-66).

392. However, it considers that it is firstly necessary to assess whether the deprivation of liberty was "lawful" within the meaning of Article 5 § 1 of the Convention (see *Khlaifia and Others*, cited above, § 91).

393. The legal basis for the applicants' deprivation of liberty was Article 140^8 § 3 of the Aliens Act, which provided, at the material time, that asylum-seekers who had lodged asylum applications at border crossing points or in transit zones were to be temporarily accommodated by the SBGS at one of the facilities indicated in the Act without the right to freedom of movement within the territory of Lithuania, until the Migration Department adopted decisions to admit them to the country (see paragraph 145 above).

394. As already noted, Article 140^8 § 3 of the Aliens Act did not require an individual decision to be adopted in respect of each asylum-seeker subjected to that measure. Moreover, at the material time, the Aliens Act did not explicitly provide for any possibility of appeal against such decisions (see paragraph 147 above; see also the subsequent amendments to the Aliens Act in paragraphs 154 above). Thus, it authorised automatic deprivation of liberty of all asylum-seekers for six months, without a possibility of appeal, which is what happened in the applicants' case (compare and contrast *H.M.M. and Others v. Latvia*, cited above, §§ 582 and 587).

395. The Court takes note of the ruling of the Lithuanian Constitutional Court that the legal regime at issue was contrary to the Constitution because it allowed a person to be deprived of his or her liberty for six months without any individual decision being adopted, without an assessment of his or her personal circumstances or the possibility of applying less coercive measures, and without any possibility of appeal before a court. In that court's view, a state of emergency or an extraordinary situation did not constitute grounds for subjecting all asylum-seekers to the most coercive restriction of their liberty, without an assessment of their individual situation (see paragraph 163 above). Taking into account the importance of the principle of subsidiarity and the primary role of the domestic courts in the protection of the rights enshrined in the Convention (see *Grzęda v. Poland* [GC], no. 43572/18, § 324, 15 March 2022), the Court finds no reason, in the present case, to reach a different conclusion, under Article 5 § 1 (f) of the Convention, to that of the Lithuanian Constitutional Court.

396. The Court considers that domestic legislation which authorised the automatic deprivation of liberty of all asylum-seekers for six months without any possibility of appeal did not meet even the minimum requirements relating to lawfulness that it has established in cases concerning mass arrivals of asylum-seekers (see *Z.A. and Others v. Russia*, § 162, and *R.R. and Others v. Hungary*, § 88, both cited above). It further observes that, although Article 5 § 1 (f) of the Convention does not require the detention to be reasonably considered necessary, in order for detention not to be arbitrary, its duration should not exceed that reasonably required for the purpose pursued (see *Saadi v. the United Kingdom*, cited above, §§ 72-74). In the present case,

as a result of the application of the aforementioned legislation, the applicants were deprived of their liberty for six months, during which period there was no assessment of whether their detention was still required for the examination of their asylum applications or for any other relevant purposes (see, *mutatis mutandis*, *Suso Musa v. Malta*, no. 42337/12, § 100, 23 July 2013, and *Z.A. and Others v. Russia*, cited above, § 169; compare and contrast *Saadi v. the United Kingdom*, cited above, § 79).

397. In the light of the foregoing, the Court finds that there has been a violation of Article 5 § 1 of the Convention on account of the applicants' deprivation of liberty from 15 April to 18 October 2022.

IV. ALLEGED FAILURE TO COMPLY WITH THE INTERIM MEASURE INDICATED BY THE COURT

398. The applicants complained that by removing them to Belarus despite the measure indicated by the Court on 8 April 2022 under Rule 39 of the Rules of Court, Lithuania had failed to comply with its obligations under Article 34 of the Convention.

Article 34 of the Convention provides:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

At the material time, Rule 39 of the Rules of Court provided:

> "1. The Chamber or, where appropriate, the President of the Section or a duty judge appointed pursuant to paragraph 4 of this Rule may, at the request of a party or of any other person concerned, or of their own motion, indicate to the parties any interim measure which they consider should be adopted in the interests of the parties or of the proper conduct of the proceedings.
>
> 2. Where it is considered appropriate, immediate notice of the measure adopted in a particular case may be given to the Committee of Ministers.
>
> 3. The Chamber or, where appropriate, the President of the Section or a duty judge appointed pursuant to paragraph 4 of this Rule may request information from the parties on any matter connected with the implementation of any interim measure indicated.
>
> 4. The President of the Court may appoint Vice-Presidents of Sections as duty judges to decide on requests for interim measures."

A. The parties' submissions

1. The applicants

399. The applicants submitted that the Lithuanian authorities had been informed of the Court's decision on interim measures on the day of its adoption – the Government's Agent had been officially notified of it on the

same day (see paragraph 78 above). In addition, that decision had been brought to the authorities' attention through several other channels. Firstly, the volunteers of *Sienos Grupė* had informed the officers of the Adutiškis border post by telephone and had attempted to give them a printed copy of the Registry's letter, which they had refused to take (see paragraphs 80 and 91 above). Secondly, a copy of that decision had been sent to the SBGS by the Human Rights Monitoring Institute (see paragraph 82 above). Thirdly, they themselves had repeatedly told the border guards about that decision and had had a copy of the Registry's letter on their mobile phones (see paragraph 85 above). Despite that, the Lithuanian authorities removed the applicants to Belarus on 9 April 2022 (see paragraph 83 above).

400. Even assuming that the border guards had not received an official notification about the decision on interim measures, the applicants contended that after receiving multiple indications of the possible existence of a legally binding order from the Court, the appropriate course of action for the border guards would have been to seek confirmation from their superiors or other relevant authorities before proceeding with the applicants' removal. However, the border guards had failed to do so.

2. The Government

401. The Government first emphasised that the Republic of Lithuania strongly confirmed its respect for the Convention protection system and that the belated compliance with the Court's decision on interim measures indicated in the applicants' case was deeply regrettable.

402. They submitted that the decision on interim measures in the applicants' case had been forwarded to the Government's Agent via eComms on a Friday evening after working hours (see paragraph 78 above). Unlike in other cases in which the Court had indicated interim measures, the Government's Agent had not been informed by the Registry by telephone. As a result, the Agent had not immediately informed the SBGS about that decision.

403. In all previous cases, the SBGS had received information about the interim measures indicated by the Court from their chief, who in turn had received that information by phone from the Government's Agent. The Agent would typically also send the information by email to various officers of the SBGS, enclosing the Court's decision received via eComms, together with its translation, and indicating the possible location of the applicants, if it could be determined from the request for interim measures. Accordingly, in the absence of an official notification from its Agent, the SBGS had had legitimate reasons to doubt the veracity of the email received at night from an "unknown sender" (see paragraph 82 above), particularly since the applicants' names had not been mentioned in the Court's decision but only in an annex. Moreover, the border guards' suspicions had also been heightened

by the fact that the applicants had previously tried to use false Spanish return documents (see paragraphs 59 and 72 above).

404. The Government further submitted that on 10 April 2022, after the applicants' representative had spoken to the media, and the journalists had contacted the Government's Agent, she had retrieved the decision from the Court's electronic database at around 11 a.m. and had immediately forwarded it to the SBGS. Therefore, if the applicants had appeared in Lithuania from that time onwards, the interim measure would have been complied with. However, they had not been detected on Lithuanian territory until 13 April 2022.

405. Lastly, the Government pointed out that action had been taken in order to prevent such a situation from recurring in the future. A meeting of the Parliamentary Committee on Human Rights had been held, in which the Government's Agent, the SBGS officers and representatives of *Sienos Grupė* had participated, and it was concluded that, although the situation in the applicants' case had resulted from human error, it was necessary to take all measures to prevent it from happening again (see paragraphs 90-94 above).

B. The Court's assessment

1. General principles

406. The Court reiterates that pursuant to Article 34 of the Convention Contracting States undertake to refrain from any act or omission that may hinder the effective exercise of an applicant's right of individual application. A failure by a Contracting State to comply with interim measures is to be regarded as preventing the Court from effectively examining the applicant's complaint and as hindering the effective exercise of his or her right and, accordingly, as a violation of Article 34 (see *Mamatkulov and Askarov*, cited above, §§ 125 and 128; see also *Abdulkhakov v. Russia*, no. 14743/11, § 222, 2 October 2012; *Paladi v. Moldova* [GC], no. 39806/05, § 88, 10 March 2009; and *M.K. and Others v. Poland*, nos. 40503/17 and 2 others, § 230, 23 July 2020). The Court emphasises that compliance with interim measures is also essential for maintaining its authority.

407. The crucial significance of interim measures is highlighted by the fact that the Court issues them, as a matter of principle, only in exceptional cases and on the basis of a rigorous examination of all the relevant circumstances. Such measures, applicable in cases of imminent risk of irreparable harm to a Convention right, which, on account of its nature, would not be susceptible to reparation, restoration or adequate compensation, may be adopted where necessary in the interests of the parties or the proper conduct of the proceedings (Rule 39 § 1 of the Rules of Court in its current version). The vital role played by interim measures in the Convention system not only underpins their binding legal effect on the States concerned, as upheld by the established case-law, but also commands that the utmost

importance be attached to the question of the States Parties' compliance with the Court's indications in that regard. Any laxity on this question would unacceptably weaken the protection of the core rights in the Convention and would not be compatible with its values and spirit (see *Soering*, cited above, § 88; *Mamatkulov and Askarov*, cited above, §§ 100 and 125; *Amirov v. Russia*, no. 51857/13, § 67, 27 November 2014; and *M.K. and Others v. Poland*, cited above, § 231).

408. Furthermore, it follows from the very nature of interim measures that a decision on whether they should be indicated in a given case will often have to be made within a very short space of time, with a view to preventing imminent potential harm from being done. Consequently, the full facts of the case will often remain undetermined until the Court's judgment on the merits of the complaint to which the measure is related. It is precisely for the purpose of preserving the Court's ability to render such a judgment after an effective examination of the complaint that such measures are indicated. Until that time, it may be unavoidable for the Court to indicate interim measures on the basis of facts which, despite making a prima facie case in favour of such measures, are subsequently added to or challenged to the point of calling into question the measures' justification (see *M.K. and Others v. Poland*, cited above, § 232).

409. Consequently, it is not open to a Contracting State to substitute its own judgment for that of the Court in verifying whether or not there existed a real risk of immediate and irreparable damage to an applicant at the time when the interim measure was indicated. It is for the Court to verify compliance with the interim measure, while a State which considers that it is in possession of material capable of convincing the Court to annul the interim measure should inform the Court accordingly (ibid., § 233).

410. The point of departure for verifying whether a respondent State has complied with the measure is the formulation of the interim measure itself. The Court will therefore examine whether the respondent State complied with the letter and the spirit of the interim measure indicated to it. Article 34 will be breached if the authorities of a Contracting State fail to take all steps that could reasonably have been taken in order to comply with the measure indicated by the Court. It is for the Government to demonstrate to the Court that the interim measure was complied with or, exceptionally, that there was an objective impediment which prevented compliance and that it took all reasonable steps to remove that impediment and to keep the Court informed of the situation. In examining a complaint under Article 34 concerning the alleged failure of a Contracting State to comply with an interim measure, the Court will not, however, re-examine whether its decision to apply that interim measure was correct (ibid., § 234, and the cases cited therein).

2. Application of those principles in the present case

411. The Court notes that, in the present case, the Government did not dispute their obligation, under Article 34 of the Convention, to comply with the measure that it had indicated, and they acknowledged that that measure had been complied with belatedly (see paragraph 401 above). Therefore, in line with the principles established in its case-law, the Court needs to assess whether there was an objective impediment which prevented the domestic authorities' compliance with the interim measure (see paragraph 410 above).

412. The Court notes that the interim measure indicated in the applicants' case on 8 April 2022 contained instructions to the Government that, provided that the applicants were on Lithuanian territory, they should not be removed until 6 May 2022 (see paragraph 78 above; see the Government's submissions concerning the applicants' location on 7 and 8 April 2022 in paragraphs 76 and 88 above). It further notes that, under domestic law, interim measures indicated by the Court constitute grounds for suspending execution of the decision to expel an alien (see paragraph 136 above), yet the applicants were removed from Lithuania to Belarus on 9 April 2022 (see paragraph 83 above).

413. It is not in dispute between the parties that on 8 and 9 April 2022 the applicants did not have with them a hard copy of the Registry's letter informing them of the indication of an interim measure in their case. While the border guards were informed of the Court's decision on interim measures by the volunteers of *Sienos Grupė* and by the Human Rights Monitoring Institute (see paragraphs 80, 82 and 84 above), on the days in issue they were not notified of that decision by the Government Agent, contrary to the usual practice in Lithuania (see paragraph 403 above; compare and contrast *O.O. v. Russia*, no. 36321/16, § 59, 21 May 2019).

414. The Court takes note of the explanation provided by the Government as to why the border authorities were not immediately notified of the decision on interim measures by their Agent – namely, that the decision on interim measures had been forwarded to the Government's Agent only via the Court's e-communication platform on a Friday evening after working hours and that, in contrast to the Registry's previous practice, the Agent had not been informed by telephone (see paragraph 402 above). It is therefore satisfied that the lack of such a notification did not result from any bad faith on the part of the Government (see, *mutatis mutandis*, *A.N.H. v. Finland* (dec.), no. 70773/11, § 27, 12 February 2013). It also accepts that, in the absence of an official notification from the Government's Agent, the SBGS had legitimate reasons to doubt the authenticity of the decision on interim measures when they received a copy of it from another source (see paragraph 82 above). Even if it cannot be said that the border guards were unaware of the possibility that a decision on interim measures had been taken, the Court does not consider that, at a time when they were facing an increased number of attempts to enter the State illegally, they were required to depart

from established working methods and to proceed to verify the authenticity of legal documents that had been transmitted to them via previously unused channels, considering that verification could only have been done using the Court's e-communication platform.

415. Furthermore, the Court has previously found the applicants' conduct to be relevant when assessing whether there was an objective impediment to compliance with the interim measure (see *Grori v. Albania*, no. 25336/04, § 192, 7 July 2009, and *Eldar Hasanov v. Azerbaijan*, no. 12058/21, § 177, 10 October 2024). In the present case, it considers that the grounds for the border guards to question the authenticity of the decision on interim measures were further strengthened by the fact that false documents had previously been found on the applicants' phones (see paragraph 403 above).

416. Accordingly, the Court is of the view that there was an objective impediment which prevented the domestic authorities from complying with the interim measure on 9 April 2022 and that that impediment did not result from reasons attributable to them.

417. The Court further notes that the Lithuanian authorities took all reasonable steps to ensure that similar situations would not occur again, by addressing the issue of compliance with interim measures at a meeting of the Parliamentary Committee on Human Rights with the participation of, among others, representatives of the SBGS, the Government Agent and the volunteers who had assisted the applicants (see paragraphs 90-94 above).

418. In the light of the foregoing, the Court finds that Lithuania has not breached its obligations under Article 34 of the Convention.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

A. Alleged violation of Article 3 of the Convention on account of ill-treatment by border guards

419. The applicants submitted that, during their removals to Belarus, they had been subjected to physical and psychological violence at the hands of the Lithuanian authorities and that they had not been provided with necessary medical assistance. They relied on Article 3 of the Convention.

1. The parties' submissions

(a) The Government

420. The Government submitted that the applicants had failed to exhaust the effective domestic remedies. In particular, Article 26 § 2 and Article 28 of the State Border Protection Act established the conditions under which border officers were entitled to use force, and according to Article 38 § 1 of the Statute of Internal Service, any officers who breached the law while carrying out their duties could incur disciplinary, administrative, civil or

criminal liability. However, the applicants had not lodged any complaints with any domestic authorities.

421. The Government submitted that, in the present case, there had been no reasonable grounds for the authorities to institute a pre-trial investigation concerning the alleged ill-treatment on their own initiative. There had been no objective data indicating that a criminal offence may have been committed against the applicants, nor had the applicants presented any complaints or any relevant circumstances when interviewed by the domestic authorities.

422. The Government emphasised that, according to the Court's established case-law, it was for the applicants to show that the domestic remedies would have been ineffective and that mere doubts about the outcome were not sufficient to justify the failure to exhaust those remedies. To find the present complaint admissible without the applicants ever having raised it before any domestic authorities would not be in line with the subsidiary nature of the Convention protection mechanism.

(b) The applicants

423. The applicants contended that it had not been necessary for them to lodge a complaint about treatment contrary to Article 3 of the Convention because it was incumbent on the national authorities to initiate an investigation of their own motion when sufficiently clear indications of ill-treatment came to their attention.

424. In the present case, the ill-treatment at issue had taken place in the presence of government officials. Moreover, the applicants had described the treatment to which they had been subjected during the criminal investigation instituted against them (see paragraphs 102 and 105 above). Furthermore, during their *de facto* detention, the applicants had lodged various complaints with the authorities in which they had referred to the physical and psychological abuse suffered at the border. In addition, the authorities must have been aware of the critical state of health in which the applicants had been found when they had been allowed to enter Lithuanian territory. Accordingly, they contended that their ill-treatment at the hands of border guards had been sufficiently brought to the attention of the Lithuanian authorities.

425. The applicants further submitted that Lithuanian law entitled the prosecutor to institute criminal proceedings even in the absence of a victim's complaint if, for example, the alleged criminal offences were of public importance. They contended that that criterion had been met in their case, considering the widespread nature of the phenomenon of ill-treatment of asylum-seekers at the border, as reported by the media and numerous international human rights organisations.

426. Lastly, the applicants submitted that they had been in a weak position *vis-à-vis* the domestic authorities because they themselves had been investigated for having entered Lithuania illegally and had been in a state of

uncertainty with regard to the outcome of the asylum procedure. As a result, they had been afraid to lodge complaints against the State.

2. The Court's assessment

(a) General principles

427. The general principles relating to the requirement to exhaust effective domestic remedies have been summarised in *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* ([GC], no. 21881/20, §§ 138-44, 27 November 2023).

428. As regards the burden of proof, it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy advanced by them was an effective one, available in theory and in practice at the relevant time. Once this burden of proof has been satisfied it falls to the applicant to establish that the remedy was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from the requirement (ibid., § 143).

429. In the area of unlawful use of force by State agents, in order to be effective, a remedy must be capable of leading to the identification and punishment of those responsible; proceedings aimed solely at awarding damages cannot be considered an adequate and effective remedy capable of providing redress for complaints based on the substantive aspect of Article 3 of the Convention (see *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, §§ 227 and 321, ECHR 2014 (extracts)).

(b) Application of those principles in the present case

430. The applicants did not dispute that it was open to them to lodge a criminal complaint against border guards. The Court observes that conduct alleged by the applicants, such as threats of violence or failure to provide medical or other necessary assistance, may constitute criminal offences under, respectively, Article 145 § 1 and Article 144 of the Lithuanian Criminal Code (those provisions have been cited in, respectively, *Šimkus v. Lithuania*, no. 41788/11, § 21, 13 June 2017, and *Paulikas v. Lithuania*, no. 57435/09, § 29, 24 January 2017). Moreover, Article 28 of the State Border Protection Act sets limits on the use of physical and psychological coercion by border guards, requiring it to be necessary and proportionate. Article 26 § 2 and Article 28 of that Act also establish the obligation of border guards to provide medical and other necessary assistance to those in need. As provided in Article 38 § 1 of the Statute of Internal Service, any civil servant who fails to act in accordance with the law may be held liable (see the Government's submissions in paragraph 420 above).

431. Furthermore, the applicants did not allege that criminal proceedings against border guards might fall short of any of the requirements of effectiveness established in the Court's case-law. In this connection, the Court observes that, in several previous cases against Lithuania, it acknowledged that criminal proceedings in principle provided for the possibility of holding law-enforcement officers liable for ill-treatment (see *Peleckas v. Lithuania* (dec.), no. 18293/03, 6 November 2007; *Gedrimas v. Lithuania*, no. 21048/12, §§ 54-55, 12 July 2016; and *Yusiv v. Lithuania*, no. 55894/13, §§ 48-49, 4 October 2016).

432. Accordingly, the Court is satisfied that the Lithuanian law provided for an effective remedy with respect to the applicants' complaint concerning ill-treatment.

433. The applicants nonetheless contended that they had not been required to use that remedy because the Lithuanian authorities had been under an obligation to open an investigation into their alleged ill-treatment of their own motion (see paragraphs 423-425 above). The Court has indeed previously held that, even in the absence of an express complaint, an investigation should be undertaken if there are other sufficiently clear indications that torture or ill-treatment might have occurred (see *Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia*, no. 71156/01, § 97, 3 May 2007). However, it is not persuaded that there were such indications in the present case. In particular, the applicants did not contend that they had had any visible marks on their bodies as a result of the alleged ill-treatment (contrast *Aksoy v. Turkey*, no. 21987/93, § 56, 18 December 1996) or that injuries consistent with the allegations of ill-treatment had been apparent from medical reports (contrast *İlhan v. Turkey* [GC], no. 22277/93, § 100, ECHR 2000-VII). Moreover, the material in the Court's possession shows that they did not raise any allegations of ill-treatment during the asylum proceedings (see paragraphs 97-100 above). While in the course of the criminal proceedings instituted against the applicants for illegal border crossing the fourth applicant stated that the border guards had threatened them with a gun (see paragraph 105 above), the Court does not consider that, in the absence of any further detail, this statement alone could be seen as constituting a sufficiently clear indication that ill-treatment might have occurred. Nor can such indications be found in any of the complaints and requests which the applicants lodged with the authorities during their stay at the aliens' reception facilities (see paragraphs 110, 111 and 113 above).

434. In the light of the foregoing, the Court does not find that the Lithuanian authorities were under an obligation to start an investigation *proprio motu* into the alleged ill-treatment of the applicants by border guards.

435. Lastly, it takes note of the applicants' submission that they were afraid to lodge complaints against the State because they were in a weak position *vis-à-vis* the domestic authorities (see paragraph 426 above). It finds

this argument to be inconsistent with the fact that, during their stay at the aliens' reception facilities while the asylum proceedings were pending, the applicants did in fact lodge several complaints and requests with the authorities (see paragraphs 110, 111 and 113 above).

436. Be that as it may, the criminal proceedings against the applicants were discontinued in June 2022. In October 2022 they were formally admitted to Lithuania and granted the right to freedom of movement, following which they were also allowed to live in places of their choice rather than in State-run facilities (see paragraph 116 above). Moreover, in February and March 2023 they were all granted refugee status and permanent residence permits in Lithuania (see paragraph 119 above). The applicants did not submit that, following those developments, there were any other special circumstances which might exempt them from the requirement to exhaust the available domestic remedies or that their complaints might have become time-barred by then. Accordingly, even if it were to be accepted that during a certain period there were special circumstances which might have exempted the applicants from complaining to the domestic authorities about the ill-treatment which they had allegedly sustained at the hands of border guards, those special circumstances ceased to exist while the present case was still pending before the Court. Given that the applicants did not dispute the general effectiveness of the criminal-law remedy, the Court considers that they could reasonably have been expected to avail themselves of it as soon as the special circumstances ceased to exist.

437. In the light of the foregoing, the Court finds that the applicants' complaint concerning the alleged ill-treatment by Lithuanian border guards must be declared inadmissible for failure to exhaust the effective domestic remedies, in accordance with Article 35 §§ 1 and 4 of the Convention.

B. Alleged violation of Article 13 of the Convention taken in conjunction with Article 3 concerning alleged ill-treatment

438. The applicants submitted that they had not had an effective remedy by which to complain about their alleged ill-treatment at the hands of the Lithuanian authorities, as required under Article 13 of the Convention taken in conjunction with Article 3.

439. In view of its above conclusion that Lithuanian law provided for an effective remedy which the applicants failed to exhaust (see paragraphs 430-437 above), the Court considers that the present complaint under Article 13 of the Convention taken in conjunction with Article 3 is manifestly ill-founded. It must therefore be declared inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

VI. APPLICATION OF ARTICLES 46 AND 41 OF THE CONVENTION

A. Article 46 of the Convention

440. Article 46 of the Convention provides, in relevant part:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.
>
> ..."

1. The parties' submissions

(a) The applicants

441. The applicants submitted that the violations to which they had been subjected had derived directly from Lithuanian law and from a widespread and documented practice. They submitted that in 2023 the State Border Protection Act had been amended in order to codify in law the practice of summary returns of people crossing the border illegally, which practice had previously been provided for only in a ministerial decision. Furthermore, according to multiple reports from civil society organisations submitted to the European Union Agency for Asylum, the number of summary removals remained high in 2023 and difficulties in requesting asylum persisted.

442. Accordingly, the applicants invited the Court to order the Government to adopt all necessary general measures to ensure: (i) that all asylum-seekers, including those arriving in an irregular manner and in times of emergency, have the right to apply for asylum and that their claims are assessed on an individual basis; and (ii) that detention is used only as a measure of last resort for asylum-seekers and undocumented migrants, following an individual assessment of its reasonableness, necessity and proportionality, and an examination of alternative measures.

(b) The Government

443. The Government contended that the choice of execution measures in the case at issue should be left to the Committee of Ministers exercising its competence under Article 46 of the Convention, in particular taking into account the absence of necessity of urgent measures, as the applicants had been granted asylum in Lithuania. The Government also pointed to the Constitutional Court's ruling of 7 June 2023 (see paragraphs 157-164 above), the case-law of the administrative courts (see paragraphs 165-169 above) and the legislative amendments concerning the deprivation of liberty of asylum-seekers (see paragraphs 153 and 154 above). Lastly, they submitted that the Lithuanian authorities had been making efforts to improve the

accessibility of the asylum procedure and the individual assessment when deciding whether to admit an alien to Lithuanian territory, as followed by the Committee of Ministers in the course of its supervision of the execution of the Court's judgment in the case of *M.A. and Others v. Lithuania* (cited above).

2. The Court's assessment

444. The applicants asked the Court to indicate general measures under Article 46 of the Convention regarding the right to apply for asylum and the detention of asylum-seekers and undocumented migrants (see paragraph 442 above).

445. In this connection, the Court firstly notes that in the present case it has not established any violations of Article 3 of the Convention. Accordingly, it sees no grounds to order any general measures requested by the applicants in that regard.

446. The Court further observes that on 7 June 2023 the Constitutional Court held, *inter alia*, that the provisions of the Aliens Act which provided for the automatic detention of asylum-seekers, without an individualised assessment and without examining the possibility of applying more lenient measures, were contrary to the Constitution (see paragraphs 157-164 above). According to the Lithuanian Constitution, a legislative provision which has been found to be contrary to the Constitution may no longer be applied (see Article 107 of the Constitution, cited in paragraph 120 above).

447. Accordingly, the legal provisions which were applied in the applicants' case and which led to the violations established in the present case have since been struck down.

448. In the light of the foregoing, the Court considers that the adoption of the general measures requested by the applicants is not necessary in the present case.

B. Article 41 of the Convention

449. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

1. Damage

(a) The parties' submissions

(i) The applicants

450. The applicants claimed 50,000 euros (EUR) each in respect of non-pecuniary damage, consisting of EUR 34,000 for the violations of Articles 2, 3 and 13 of the Convention and Article 4 of Protocol No. 4 to the Convention; EUR 15,000 for the violations of Article 5 §§ 1, 2 and 4 of the Convention; and EUR 1,000 for the violation of Article 34 of the Convention.

(ii) The Government

451. The Government submitted that the applicants' claim in respect of non-pecuniary damage could not be considered reasonable and was excessive in the light of the circumstances of the case.

(b) The Court's assessment

452. The Court reiterates that just satisfaction can be awarded only in so far as the damage in question is the result of a violation found, and that no award can be made for damage caused by events or situations that have not been found to constitute a violation of the Convention, or for damage related to complaints declared inadmissible (see *Taganova and Others v. Georgia and Russia*, nos. 18102/04 and 4 others, § 410, 17 December 2024, and *Skučai v. Lithuania*, no. 60969/21, § 145, 4 February 2025).

453. In the present case, the Court has not established any violations of Articles 2, 3, 13 and 34 of the Convention or of Article 4 of Protocol No. 4 to the Convention. Accordingly, it dismisses the applicants' claim in respect of non-pecuniary damage relating to those complaints (see paragraph 450 above).

454. On the other hand, the Court has found that there have been violations of the applicants' rights under Articles 5 § 1, 5 § 2 and 5 § 4 of the Convention. It has no reason to doubt that those violations must have caused the applicants emotional distress and suffering which cannot be compensated for by the finding of a violation alone. Having regard to the principle of *ne ultra petita* (see *Ochigava v. Georgia*, no. 14142/15, § 66, 16 February 2023, and *B.F. and Others v. Switzerland*, nos. 13258/18 and 3 others, § 152, 4 July 2023), it awards each applicant EUR 15,000 under this head.

2. Costs and expenses

(a) The parties' submissions

455. The applicants submitted that they had not incurred any legal costs for their representation, as their representatives had provided services on a *pro bono* basis. However, they asked to be reimbursed for the following:

– EUR 1,544 for the travel and accommodation expenses incurred by their legal team in order to attend the hearing before the Grand Chamber; they provided relevant tickets and receipts;

– EUR 2,000 which they had paid for expert advice on the aspects of the Lithuanian law relevant to the case; they provided an invoice indicating that their representatives had paid that amount to a relevant expert.

456. The Government did not contest the applicants' claim in respect of costs and expenses.

(b) The Court's assessment

457. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see, among many other authorities, *Pindo Mulla v. Spain* [GC], no. 15541/20, § 193, 17 September 2024, and the cases cited therein). Moreover, the Court will uphold claims for costs and expenses only in so far as they are related to the violations it has found, and will reject them in so far as they relate to complaints that have not led to the finding of a violation, or to complaints declared inadmissible (see, as a recent authority, *Associated Newspapers Limited v. the United Kingdom*, no. 37398/21, § 115, 12 November 2024).

458. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,800, plus any tax that may be chargeable to the applicants, jointly to the four applicants in respect of the costs and expenses incurred in the proceedings before the Court.

3. Default interest

459. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, admissible the complaints under Article 3 of the Convention concerning the applicants' removal to Belarus and the complaints under Article 5 §§ 1, 2 and 4 of the Convention concerning

the applicants' deprivation of liberty, and inadmissible the complaints alleging a lack of effective remedies under Article 13 of the Convention taken in conjunction with Article 3 concerning the applicants' removal to Belarus, the complaint alleging ill-treatment by Lithuanian border guards under Article 3 of the Convention and that of a lack of effective remedies under Article 13 of the Convention taken in conjunction with Article 3 in that regard;

2. *Holds*, by eleven votes to six, that there has been no violation of Article 3 of the Convention in respect of any of the applicants;

3. *Holds*, unanimously, that it is not necessary to examine separately the admissibility and merits of the applicants' complaints under Article 4 of Protocol No. 4 to the Convention;

4. *Holds*, unanimously, that it is not necessary to examine separately the admissibility and merits of the applicants' complaints under Article 13 of the Convention taken in conjunction with Article 4 of Protocol No. 4;

5. *Holds*, unanimously, that there has been a violation of Article 5 § 1 of the Convention in respect of all four applicants;

6. *Holds*, unanimously, that there has been a violation of Article 5 § 2 of the Convention in respect of all four applicants;

7. *Holds*, unanimously, that there has been a violation of Article 5 § 4 of the Convention in respect of all four applicants;

8. *Holds*, by eleven votes to six, that there has been no violation of Article 34 of the Convention;

9. *Holds*, unanimously,
   (a) that the respondent State is to pay the applicants, within three months, the following amounts:
      (i) EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, to each applicant in respect of non-pecuniary damage;
      (ii) EUR 1,800 (one thousand eight hundred euros), plus any tax that may be chargeable to the applicants, to the four applicants jointly in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

10. *Dismisses*, by eleven votes to six, the remainder of the applicants' claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 24 November 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

John Darcy	Mattias Guyomar
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint partly dissenting opinion of judges Ktistakis, Paczolay, Felici, Krenc, Kovatcheva and Adamska-Gallant is annexed to this judgment.

JOINT PARTLY DISSENTING OPINION OF JUDGES KTISTAKIS, PACZOLAY, FELICI, KRENC, KOVATCHEVA AND ADAMSKA-GALLANT

1. With all due respect to our esteemed colleagues, we disagree with the conclusion reached in the present judgment that there has been no violation of Article 3 of the Convention. We also consider that Article 34 has been violated in the present case. We wish to elaborate on our position and explain the reasons underlying our disagreement.

I. ARTICLE 3 OF THE CONVENTION

2. The applicants complained under Article 3 of the Convention that they had been returned on six occasions to Belarus without any examination of their applications for international protection, and that this had exposed them to the risk of being returned to their country of origin and of ill-treatment at the hands of the Belarusian authorities.

3. At the outset, we would like to start by emphasising that we are fully conscious of the unprecedented and exceptional difficulties faced by the Lithuanian authorities in the relevant period. There is absolutely no dispute on that point.

4. Yet, and as recalled by the present judgment (see paragraphs 296-297), however significant those difficulties and threats may have been, they could not absolve the respondent State from its obligations under the Convention and, in particular, those provided for under Article 3. The prohibition of inhuman or degrading treatment, enshrined in Article 3, is indeed connected to the most fundamental values of democratic societies. This prohibition reflects a deliberate and unconditional commitment by the Contracting States not only in peacetime, but also in time of war or other public emergency threatening the life of the nation, inasmuch as the States did not provide for any possibility of derogation from Article 3 under Article 15.

5. In that connection, it has been established in the Court's case-law since the *Soering* judgment that a foreign national may not be removed from a State party to the Convention if, following the removal, he or she would face a real risk of being subjected to treatment contrary to Article 3 in the destination country (see *Soering v. the United Kingdom*, 7 July 1989, § 91, Series A no. 161). This case-law is longstanding (see in particular *Chahal v. the United Kingdom*, 15 November 1996, §§ 79-80, *Reports of Judgments and Decisions* 1996-V, and *Saadi v. Italy* [GC], no. 37201/06, §§ 125-127, ECHR 2008) and has never been called into question (see *N.D. and N.T. v. Spain* [GC], nos. 8675/15 and 8697/15, § 232, 13 February 2020). This does not mean that the removal of a foreign national will, in itself, be contrary to Article 3 of the Convention. Moreover, it is equally well established that, although the protection afforded by Article 3 of the Convention is absolute, a

certain threshold of severity must be reached (see *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 159, 15 December 2016, and *Savran v. Denmark* [GC], no. 57467/15, § 122, 7 December 2021), so as not to trivialise the application of this provision.

6. We would also like to make clear that individuals who are subjected to instrumentalisation cannot be assumed to bear responsibility for it, unless there is clear evidence to the contrary. Foreign nationals who are instrumentalised cannot be presumed to be complicit and thereby be deprived of the rights guaranteed to them by the Convention.

7. In the present judgment, the Court clarifies the assessment that national authorities are required to carry out under Article 3 of the Convention before removing an individual in a situation where the Contracting State is being targeted by "instrumentalised migration" – as strictly defined by the Court (at paragraph 283). Thus, according to the present judgment (paragraph 299):

> "... the national authorities have an obligation to detect those individuals who would be particularly at risk of suffering or enduring ill-treatment. This refers to: (i) those who present evident personal vulnerabilities (for example, owing to age, ill health or disability), and (ii) those with a specific basis for claiming that removal to the instrumentalising State would evidently expose them to a real and immediate threat to life or a real and immediate risk of ill-treatment reaching the threshold of severity under Article 3."

8. Regarding the first category, namely migrants "who present evident personal vulnerabilities", the majority's finding is quite straightforward and categorical in the present case: "none of the applicants presented any evident personal vulnerabilities and therefore did not come within the first category that the Court has specified above" (see paragraph 306). This raises, in our view, two interrelated issues. It may first be argued that personal vulnerability cannot only stem from characteristics intrinsic to the individual but may also arise from the very concrete circumstances in which a person finds himself or herself at the relevant time, including situations in which a foreign national, as a result of repeated returns, has spent many days in dire conditions, without shelter or any form of assistance, enduring prolonged hunger and thirst and suffering from extreme exhaustion. Secondly, the conclusion made by the Court itself in paragraph 306 is not supported by any prior assessment by the domestic authorities. In keeping with the principle of subsidiarity underpinning the Convention, which places primary responsibility on the national authorities, the respondent State has to demonstrate that a mechanism capable of detecting migrants' personal vulnerabilities at its borders has been put in place and applied (compare *H.M.M. and Others v. Latvia* [GC], no. 42165/21, § 457, 24 November 2026).

9. In the present case, the applicants – one man and three women – were in poor physical condition, suffering from the cold and extreme exhaustion, and their condition was deteriorating increasingly as a result of repeated summary returns. The Government mentioned – and the majority referred

to – the possibility for aliens who had crossed the border illegally to be admitted to Lithuanian territory on humanitarian grounds, including on account of their vulnerability (see paragraph 306). It is true that the Aliens Act provided that the SBGS could accept asylum applications lodged by aliens who had crossed the border illegally on the grounds of a person's vulnerability or other individual circumstances (see paragraph 142). However, the Government did not elaborate as to what circumstances might constitute humanitarian grounds, and the law did not define the border guards' discretion when applying this humanitarian exception. In any event, the existence of such discretion does not, by itself, establish that an effective assessment of vulnerability has taken place. We do believe that the rights guaranteed by the Convention must operate as effective safeguards, not merely as possibilities. Last but not least, we note that the possibility mentioned by the Government presupposes the lodging of an asylum application, the relevance of which is expressly called into question by the majority in paragraph 308 of the present judgment.

10. As to the second category, referring to individuals "with a specific basis for claiming that removal to the instrumentalising State would evidently expose them to a real and immediate threat to life or a real and immediate risk of ill-treatment reaching the threshold of severity under Article 3", the majority remain silent as to the fact that on 8 April 2022 the Court granted an interim measure under Rule 39 of the Rules of Court, indicating that, provided that the applicants were on Lithuanian territory, they should not be removed until 6 May 2022 (see paragraph 78). We agree that the indication of an interim measure does not prejudge the merits under Article 3 of the Convention. It nevertheless constituted a specific warning which, once brought to the authorities' attention, called for verification and an assessment of the applicants' concrete situation, in addition to compliance with the measure itself. We are therefore convinced that this is an element which required the national authorities to detect the applicants as having a specific basis for claiming that they would be evidently exposed to a real and immediate threat to life or a real and immediate risk of ill-treatment in the event of removal to Belarus (see and compare *A.R. and Others v. Poland* [GC], no. 42120/21, § 339, 24 November 2026). It must be highlighted that the Court applies Rule 39 in very exceptional circumstances, only where it considers that there is an imminent risk of irreparable harm to a Convention right. However, the interim measure indicated by the Court in the present case was not complied with – which leads us to conclude in parallel, for the reasons set out below, that Article 34 of the Convention has also been violated (see paragraphs 18-24 below).

11. In addition, we attach great importance in the present case to the fact that the applicants were ultimately granted refugee status (see paragraph 119 of the judgment). This element distinguishes the present case from the two other cases adjudicated at the same time by the Grand Chamber (*A.R. and*

Others v. Poland [GC] and *H.M.M. and Others v. Latvia* [GC], both cited above). The recognition of refugee status, granted in February and March 2023, supports the seriousness of the applicants' claims to international protection. To be sure, it does not establish retrospectively the precise risks they faced in Belarus in March and April 2022. Nevertheless, the applicants' requests for international protection should have prompted the domestic authorities to examine their situation before removing them. We note in that respect that the respondent Government themselves placed considerable emphasis in their written and oral submissions on the possibility for the applicants to seek international protection at the designated border crossing points. Moreover, they pointed out the possibility of accepting an asylum request lodged by a foreign national on the basis of that person's vulnerability or other individual circumstances which are not necessarily linked to his or her country of origin (see paragraphs 258 and 142).

12. The Government argued, however, that the applicants had not expressed a wish to seek asylum when they had previously been apprehended and removed, and that they had applied for asylum for the first time on 13 April 2022 (see paragraph 250). The applicants submitted that they had made their asylum requests to border guards orally (see paragraph 223). It is therefore necessary to ascertain whether the applicants have furnished prima facie evidence in support of their version of events. If that is the case, the burden of proof should shift to the Government (see *N.D. and N.T. v. Spain* [GC], cited above, § 85). More generally, we are inclined to consider that applicants should not be required to meet an excessive burden of proof where domestic law restricts or prevents access to the areas concerned, thereby limiting the ability of the media, lawyers and NGOs to gather evidence that could substantiate their claims.

13. It is not contested that the applicants' ability to collect any direct evidence was seriously limited. In particular, the domestic law prohibited persons at a border crossing point from taking photographs or making video-recordings of the area without the border guards' permission[1]. Given the circumstances, the applicants cannot be expected to provide photographs or audio or video-recordings of their attempts to request asylum at the border (compare and contrast *M.A. and Others v. Latvia* (dec.), no. 25564/18, § 54, 29 March 2022). However, they did present an accurate description of their attempts to cross the border, including the relevant dates and locations, which corresponds to the information provided by the Government. They gave a specific account of their interactions with the border guards. The applicants' version of the events was coherent and detailed (see, *mutatis mutandis*, *M.A. and Others v. Lithuania*, no. 59793/17, § 107, 11 December 2018, and *M.K. and Others v. Poland*, nos. 40503/17 and 2 others, §§ 174-77, 23 July 2020),

[1] See Article 4 § 4 (3) of the State Border Protection Act and Order no. 4-418 on the implementation of the Seimas' decision of 7 December 2021 on the declaration of a state of emergency.

and we are convinced that there was some *prima facie* evidence corroborating the applicants' assertion that they made requests for asylum at the relevant time. The burden of proof therefore should have shifted to the Government to refute that assertion. In that respect, we note that, unlike the applicants, the Lithuanian authorities were in a position to collect evidence of the interactions between the border guards and the applicants[2]. The Government did provide a 38-second video recorded on 2 April 2022, and relied on statements identifying Spain as the applicants' intended destination (see paragraphs 74, 97-98 and 250 of the judgment). However, it is difficult to draw any firm evidential conclusions from this brief recording, in a mixture of Spanish and English, while an initial intention to travel to Spain does not exclude a subsequent or concurrent request for protection in Lithuania. In view of the foregoing, we consider that the Government have failed to refute the applicants' credible account (see, *mutatis mutandis*, *M.H. and Others v. Croatia*, nos. 15670/18 and 43115/18, §§ 271-73, 18 November 2021).

14. The Government contended furthermore that when the applicants were apprehended by Lithuanian border guards, they presented false Spanish return documents (see paragraph 248). The applicants alleged that they had never presented false documents to the Lithuanian border guards (see paragraphs 227-229). Three elements appear relevant to us in this regard. First, none of the official reports drawn up by the border guards made any mention of the impugned Spanish documents. On the contrary, each time the applicants were apprehended, the border guards noted that they had presented their Cuban passports (see paragraphs 49, 51, 53, 55, 57 and 80). The Government did not provide any reasons to justify a failure to officially record the attempted use of false documents, if such an event had indeed occurred. Secondly, it is worth noting that, according to the material provided to the Court, the allegation that the applicants had presented forged documents to the border guards was made for the first time by a representative of the SBGS during a meeting of the Parliamentary Committee on Human Rights on 20 April 2022 (see paragraph 92). Those statements were made in the context of an attempt by the SBGS to justify the applicants' removal in spite of the interim measure indicated by the Court (see paragraphs 18-24 below). Thirdly, all of the applicants were granted refugee status in Lithuania and the allegation that they have continued to reside and work there to the present day (see paragraph 228) has not been disputed by the Government. For all these reasons, we are inclined to attach limited weight to the allegation that the applicants relied on forged documents in order to travel onwards to Spain.

15. Having clarified these points, we find it very difficult to see how the time spent by the applicants with the border authorities, as referred to in

[2] Under the Minister of the Interior's decision of 2 August 2021, instances of illegal border crossing had to be recorded by technical means, including video.

paragraph 307 of the judgment, demonstrates that they had an effective opportunity to submit their claims that removal to Belarus would expose them to a real and immediate threat to life or a real and immediate risk of severe ill-treatment. In our view, the mere fact that the applicants spent time with the border guards does not establish that they had an effective opportunity to put forward those claims. Nor can we agree with paragraph 308 that the requests for asylum were immaterial: for the reasons given above, they are relevant in so far as they called for an assessment of the safeguards against *refoulement*, and the domestic authorities ultimately found that the applicants needed protection, admitting them on their territory and granting them refugee status. This does not mean that the Convention should be interpreted as guaranteeing a right to asylum – not at all. Neither the Convention nor its Protocols enshrine such a right (compare, in this respect, Article 18 of the Charter of Fundamental Rights of the European Union). What Article 3 of the Convention prohibits is the exposure of any individual falling within the "jurisdiction" of a Contracting State to treatment incompatible with this provision (see paragraph 5 above).

16. In fact, and in total, the applicants endured six summary returns between 31 March and 9 April 2022. As a result of this "ping pong" situation, they spent almost two weeks in the forests, without stable access to adequate shelter, food and water, and exposed to cold weather. We find it particularly troubling that, on five of the six occasions when the applicants were apprehended on Lithuanian territory, Lithuanian border guards returned them to Belarus in locations which were 14 to 153 km away from the places of their apprehension (see paragraphs 50, 52, 54, 56, 58 and 81 of the judgment). For instance, on 9 April 2022, when the applicants were removed for the sixth time and in spite of the interim measure indicated by the Court on 8 April 2022, they were taken to a location approximately 153 km from the place of their apprehension and approximately 29 km from the nearest official border crossing point (see paragraph 83). The Government have not provided any explanation as to how those locations were chosen or why taking the applicants there was necessary. They emphasised that the applicants could have gone to border crossing points to apply for asylum, but failed at the same time to explain why the applicants were removed to locations at such a considerable distance from the official border crossing points.

17. For all the foregoing reasons, we are of the view that Article 3 of the Convention has been violated in the present case. We wish to make it clear that the respondent State cannot be held responsible for the conduct of a third State. The Court's task is not to adjudicate on the responsibility of the State instrumentalising migration. The sole issue before the Court is whether the respondent State has complied with its obligations under the Convention (see, *mutatis mutandis, Soering*, cited above, § 91).

II. ARTICLE 34 OF THE CONVENTION

18. Our second and no less important point of disagreement with our esteemed colleagues concerns the respondent State's compliance with the interim measure indicated by the Court in the present case. On this point, we need to emphasise the paramount importance of such compliance, since interim measures are aimed notably at preventing irreparable harm to the rights guaranteed by Article 3 of the Convention.

19. In the present case, the interim measure under Rule 39 of the Rules of Court was issued on 8 April 2022. It contained instructions to the Government that, provided that the applicants were on Lithuanian territory, they should not be removed until 6 May 2022 (see paragraph 78 of the judgment). However, despite the indication of this interim measure, the applicants were removed from Lithuania to Belarus on 9 April 2022 (see paragraph 83), while they were in the custody of the Lithuanian border authorities.

20. It is not in dispute between the parties that on 8 and 9 April 2022 the applicants did not have with them a hard copy of the Registry's letter informing them of the indication of an interim measure in their case. They were in the forest near the border and had limited physical contact with the volunteers who assisted them. In such circumstances, they could not have been expected to present an official copy of such a document to the border guards. There was, however, no dispute that on 8 and 9 April 2022 the border guards had been informed of the Court's decision on interim measures by the volunteers of *Sienos Grupė* and that they had received a copy of that decision from the Human Rights Monitoring Institute (see paragraphs 80 and 82). The authorities had thus received specific information, through more than one source, about a measure concerning the applicants. They could not have been unaware of the possibility that such a measure had been indicated (see, *mutatis mutandis*, *Zokhidov v. Russia*, no. 67286/10, § 203, 5 February 2013).

21. The Government explained that the border authorities were not immediately notified of the decision on the interim measure by their Agent, contrary to the usual practice in Lithuania; that the decision had been forwarded to the Government's Agent only via the Court's e-communication platform (eComms) on a Friday evening after working hours; and that, in contrast to the Registry's previous practice, the Agent had not been informed by telephone. Accordingly, we are satisfied that the lack of such a notification did not result from any bad faith on the part of the Government (see, *mutatis mutandis*, *A.N.H. v. Finland* (dec.), no. 70773/11, § 27, 12 February 2013). We are also prepared to accept that, in the absence of notification from the Government's Agent, the SBGS may have had legitimate reasons to doubt the authenticity of a decision on interim measures received from other sources.

22. However, before removing the applicants to Belarus, the SBGS did not take any steps to verify whether the decision on interim measures was authentic. Nothing prevented the national authorities from carrying out the necessary checks. In particular, we observe that, while the applicants were apprehended at 1.30 a.m., they were not removed until 12.25 p.m. (see paragraph 83) and it was not alleged that there had been any objective reasons preventing the SBGS from contacting the Government's Agent before removing the applicants on 9 April 2022. We are deeply concerned by the fact that the border authorities removed the applicants to Belarus solely on the grounds that they had doubts as to the authenticity of the Court's decision and without having made any attempt to dispel those doubts. We note in that regard that the Chair of the Parliamentary Committee on Human Rights expressed the same concerns (see paragraph 94).

23. We would like to stress that the obligation to comply with an interim measure is incumbent on the respondent State as a whole. Therefore, the fact that verification required access to eComms does not explain why the SBGS could not have sought confirmation through the Government's Agent or their superiors while refraining from carrying out the removal. Such an enquiry would not have required the border guards to accept an unverified document as authentic. While earlier suspicions concerning travel documents could certainly justify verification, they could not justify a failure to verify.

24. Against this background, we are unable to share the majority's findings that "there was an objective impediment which prevented the domestic authorities from complying with the interim measure on 9 April 2022 and that that impediment did not result from reasons attributable to them" (see paragraph 416). We consider that the respondent State failed to comply with its obligations under Article 34 of the Convention. Our position is also supported by the statement made during the hearing before the Grand Chamber by the Government's Agent, who expressly acknowledged that the respondent State had "failed to authenticate the Court's interim measure decision quickly enough for the border patrols". At the same time, we take note with satisfaction of his statement that "the operational reaction mechanism has been updated to prevent such failures in the future". However, any welcome improvements designed to prevent recurrence, as also referred to in paragraph 417 of the judgment, cannot retrospectively remedy the failure to take reasonable steps to verify and comply with the interim measure prior to the applicants' removal.

Appendix

List of applicants:

No.	Initials	Year of birth	Nationality
1.	C.O.C.G.	1991	Cuban
2.	S.R.H.P.	1992	Cuban
3.	D.G.C.	1995	Cuban
4.	Y.R.B.	2000	Cuban